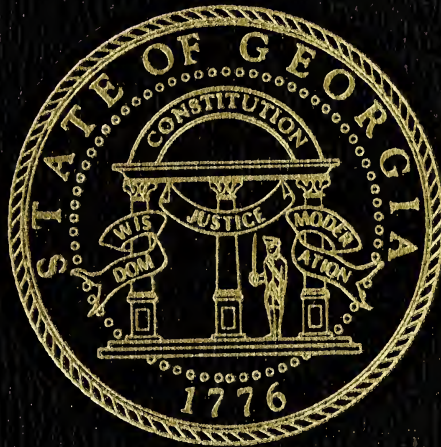


**OFFICIAL CODE
OF
GEORGIA**

ANNOTATED



VOLUME 35

Title 47. Retirement and Pensions

2010 Edition



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OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



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Volume 35 **2010 Edition**

Title 47. Retirement and Pensions

Including Acts of the 2010 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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2010

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OFFICE OF SECRETARY OF STATE

I, Brian P. Kemp, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia: all as same appear of file and record in this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 9th day of July, in the year of our Lord Two Thousand and Ten and of the Independence of the United States of America the Two Hundred and Thirty-Fifth.

B. P. Kemp

Brian P. Kemp, Secretary of State

Preface

This volume cumulates and replaces the 2000 edition of Volume 35 of the Official Code of Georgia Annotated, as supplemented by the 2009 Cumulative Supplement. The 2000 Volume 35 and its 2009 Supplement may be recycled or, if so desired, retained for historical purposes. This volume contains all laws specifically codified in Title 47 by the General Assembly through the 2010 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through April 30, 2010. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2008, 2009, and 2010 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2008 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Editor's notes. — See the editor's notes under § 1-1-1 quoting in full the provisions of the annual reenactment of the Code and its supplement except for the provisions of this title.

Law reviews. — For article, "The Pension Game: Age- and Gender-Based Inequities in the Retirement System," see 25 Ga. L. Rev. 1 (1990). For article, "Pension Reform/Simplification — An Urgent Need: Practical Proposals from the Front Lines," see 25 Ga. L. Rev. 91 (1990).

RESEARCH REFERENCES

ALR. — Validity, construction, and effect of provision forfeiting or suspending benefits in event of competitive employment as part of retirement or pension plan, 18 ALR3d 1246.

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RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Wrongful Termination of Retirement Benefits, 13 POF2d 531.

ARTICLE 1
IN GENERAL

47-1-1. Intent of codification and enactment of this title.

The enactment of Title 47 of this Code is intended only as a recodification of the existing laws of this state relating to retirement and pensions. The codification and enactment of this title are not intended to nor shall they be construed to increase, diminish, grant, destroy, impair, alter, or otherwise affect any pension, retirement benefit or allowance, survivors benefit, membership or right to membership, creditable service or right thereto, prior service or right thereto, membership service or right thereto, or any option, election, or right of any kind which is in existence on November 1, 1982. (Code 1981, § 47-1-1; Ga. L. 2000, p. 131, § 1.)

Editor's notes. — This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act).

RESEARCH REFERENCES

ALR. — Construction and application of of 1974 (29 USCA § 1001 et seq.) by United Employee Retirement Income Security Act States Supreme Court, 150 ALR Fed. 441.

47-1-2. Pooling of funds by retirement systems for investment purposes; accounting practices with regard to pooled funds.

(a) The boards of trustees or directors, by whatever name known, of any two or more retirement systems created by general law, pursuant to the mutual consent of such boards, may pool their trust funds for the purposes of joint investment. The board of trustees or directors, by whatever name known, of any two or more local retirement systems funded by a single political subdivision may likewise pool their trust funds for the purposes of joint investment. When such pooling occurs, the board of trustees of the managing retirement system shall account for the pooled trust funds in accordance with generally accepted principles of accounting, in order to maintain separate accountability of such funds while under its management.

(b) The pooled trust funds may be invested in accordance with Chapter 2 of this title, relating to the Employees' Retirement System of Georgia, notwithstanding any other provisions of law to the contrary.

(c) Nothing in this Code section shall establish a legal provision for combining the Employees' Retirement System of Georgia with the Teachers Retirement System of Georgia. (Ga. L. 1974, p. 1178, § 1; Ga. L. 1991, p. 994, § 1.)

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313.

47-1-3. Power of a local retirement system to hire an actuary; payment of the administrative costs of a local retirement system; periodic actuarial investigations; annual financial report.

(a) As used in this Code section, the term “local retirement system” means any retirement, pension, or emeritus system covering an employee or employees of a county, municipality, local board of education, or other political subdivision, or any groups or classifications of such employees which is funded at least in part by such political subdivisions.

(b) The board of trustees or other governing authority of each local retirement system is authorized and directed to designate and retain the services of a qualified actuary to provide technical advice and assistance to the board of trustees or governing authority in the management of the retirement system and in the preparation of surveys or reports required under this Code section.

(c) Any political subdivision maintaining a local retirement system for an employee or employees or for classifications of employees is authorized to expend any public funds available to it to pay any portion of the administrative costs of the retirement system, if the funds available to the retirement system are not adequate to pay the administrative costs, notwithstanding any contrary provisions of any laws relative to such local retirement system.

(d) Once every two years, the board of trustees or other governing authority of each local retirement system shall have the system’s actuary make an actuarial investigation. Such actuarial investigation shall include the results of any actuarial investigation into the then current assumptions as to rates of interest, mortality, disability, withdrawal, and retirement. The actuarial investigation shall also include consideration of the experience of the retirement system under its assumptions and a comparison of results with the previous actuarial investigations and may also include such other studies as may be necessary or desirable for the completeness and accuracy of the actuarial investigation. The actuarial investigation shall also include a valuation of the contingent assets and liabilities of the retirement system and a determination of the payments necessary to amortize over a stated period any unfunded accrued liability disclosed. As an exhibit to the actuarial investigation, the local retirement system board of trustees or other governing authority thereof shall attach a copy of all the provisions of the plan for the local retirement system, including the requirements and conditions for qualifying to participate, the nature of benefits under the plan, and the manner in which the local retirement system is funded. Beginning on October 1, 1996, and every two years thereafter on such date,

the board of trustees or other governing authority of each such local retirement system shall have on file with the state auditor an actuarial investigation meeting the requirements of this subsection. This subsection shall not apply to a retirement or pension program which is established pursuant to an insurance contract between an insurer and a county, municipality, local board of education, or other political subdivision or between an insurer and any commission, board, or other agency of any such political subdivision. As used in the preceding sentence, the word “insurance” and the word “insurer” shall have the meanings set forth, respectively, in Code Section 33-1-2. Municipalities providing a retirement program for their employees pursuant to a contract with the Board of Trustees of the Georgia Municipal Employees Benefit System shall not be required to submit actuarial investigations under this subsection or financial reports under this Code section. In lieu of such actuarial investigations and reports, the Board of Trustees of the Georgia Municipal Employees Benefit System shall prepare a comprehensive report once every two years based on the information required under Code Sections 47-5-26 and 47-5-30. Such comprehensive reports shall be filed with the state auditor at the same time as actuarial investigations are filed as provided in this subsection. Any county providing a retirement program for its employees pursuant to a contract with, or a program offered by, the Association County Commissioners of Georgia shall also be exempt from the requirements of this subsection or financial reports under this Code section, if the Association County Commissioners of Georgia files with the state auditor, at the same time actuarial investigations are filed under this subsection, a comprehensive report substantially equivalent to the comprehensive report filed by the Board of Trustees of the Georgia Municipal Employees Benefit System as provided in this subsection. Nothing in this subsection shall be construed as to exempt either the Georgia Municipal Employees Benefit System or the Association County Commissioners of Georgia from the provisions of Code Section 47-20-4.

(e) The board of trustees or other governing authority of each local retirement system shall file a financial report on such local retirement system with the state auditor at the same time each actuarial investigation is filed with the state auditor as provided by subsection (d) of this Code section.

(f) The financial report shall include, for each of the two fiscal years covered by the report, the following information:

(1) The receipts of the local retirement system, including member contributions, employer contributions, any other contributions, investment income, gains from the sale of the system’s assets, and any other receipts from whatever source derived;

(2) The disbursements of the local retirement system, including benefit payments to retirees or beneficiaries, refunds to members, losses

from the sale of the system's assets, and administrative expenses of the system; and

(3) The certificate of the chairperson of the board of trustees stating that the investment practices of the fund have been in compliance with the provisions of Article 7 of Chapter 20 of this title at all times during the reporting period or, if the practices have at any time been out of compliance with such provisions, providing a description of the noncompliance, the reason for the noncompliance, and the corrective action taken.

(g) The financial report shall also include statistics on the membership and beneficiaries of the local retirement system. There shall be attached to the financial report an exhibit showing all amendments to or changes in the local retirement system which have been made since the filing of the previous actuarial investigation under subsection (d) of this Code section.

(h) The first financial report shall be filed on October 1, 1996, and subsequent reports shall be filed every two years thereafter on October 1.

(i) The financial reports, the actuarial investigations, and all exhibits thereto and modifications thereof shall be a matter of public record open to inspection by the public.

(j) The financial reports required by this Code section shall apply to retirement or pension programs established pursuant to an insurance contract, as described by subsection (d) of this Code section. (Ga. L. 1974, p. 1407, §§ 1-3; Ga. L. 1981, p. 931, §§ 1, 2; Ga. L. 1982, p. 3, § 47; Ga. L. 1987, p. 146, § 1; Ga. L. 1990, p. 190, § 1; Ga. L. 1996, p. 651, § 1; Ga. L. 2000, p. 2, § 14; Ga. L. 2001, p. 21, § 1.)

Cross references. — Triennial actuarial investigations required for each retirement system of a political subdivision, § 47-20-21.

Law reviews. — For article surveying de-

velopments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

RESEARCH REFERENCES

ALR. — Statute of limitations in respect of action or proceeding to establish right to, or recovery of benefits of, pension, 136 ALR 809.

Gift to or for employees' pension fund as valid charitable gift or trust, 28 ALR2d 428.

Vested right of pensioner to pension, 52 ALR2d 437.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan, 50 ALR3d 880.

Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.

47-1-4. Report of the state auditor on the condition of local retirement systems.

Based on the most recent actuarial investigations on file pursuant to subsection (d) of Code Section 47-1-3 and financial reports submitted under subsections (e) through (j) of Code Section 47-1-3, the state auditor, once every two years beginning on January 1, 1997, shall submit a report on the condition of local retirement systems to the Governor and each member of the General Assembly. The report shall deal specifically with any local retirement system which the state auditor has reason to believe is not in actuarially sound condition or has not been in compliance with the provisions of Code Section 47-1-12. A copy of the state auditor's report shall also be sent to the Attorney General and to the applicable governing authority of the political subdivision and the applicable board of trustees or other governing authority of the local retirement system which the state auditor finds is not in actuarially sound condition or has not been in compliance with the provisions of Article 7 of Chapter 20 of this title. (Ga. L. 1981, p. 931, § 3; Ga. L. 1996, p. 651, § 2; Ga. L. 2001, p. 21, § 1.)

Cross references. — Triennial report to include list of local retirement systems not in conformance with minimum funding standards, § 47-20-21.

47-1-5. Duty of governing authorities to make and file actuarial investigations and to file financial reports; withholding of state funds for failure to meet this duty.

It shall be the duty of the governing authority of each county, municipality, or other political subdivision whose employees are covered under a local retirement system and the duty of a local board of education whose employees are covered under a local retirement system to cause the actuarial investigations required by subsection (d) of Code Section 47-1-3 to be made and to cause such actuarial investigations to be filed with the state auditor as required by that subsection. It shall also be their duty to cause financial reports to be submitted to the state auditor as required by subsections (e) through (j) of Code Section 47-1-3. If a required actuarial investigation and financial report are not submitted, then within 30 days after the date on which such investigation and report were due in the office of the state auditor, the state auditor shall notify, in writing, the governing authority of the county, municipality, or other political subdivision whose employees are covered under the applicable local retirement system. If the actuarial investigation and financial report are not received by the state auditor within 60 days after the date such notice is sent to the governing authority, the state auditor shall notify the state treasurer; and it shall be the duty of the state treasurer to withhold any state funds payable to the applicable political subdivision or local board of education until the actuarial investigation and financial report are submitted to the state auditor. The state auditor shall advise the state treasurer within five days

after receiving the actuarial investigation and financial report to release any state funds payable to the applicable political subdivision. (Ga. L. 1981, p. 931, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, §§ 3, 4/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the fourth and fifth sentences and substituted “state treasurer” for “director” in the fourth sentence.

47-1-6. Effect of World War II armed forces service on retirement benefits; payments to retirement systems for such periods.

(a) No veteran of World War II who was discharged other than dishonorably and who was furloughed from a position of employment with a county or municipal government which has a retirement or pension plan for the position occupied shall suffer or otherwise lose any seniority toward his retirement or pension by virtue of such service in the armed forces of the United States.

(b) No such veteran shall be required to make any payments to any such retirement or pension fund for and during his period of service with the armed forces of the United States.

(c) This Code section shall apply to a political subdivision of any county or municipality where such a retirement or pension plan is in effect. (Ga. L. 1947, p. 858, §§ 1-3.)

Cross references. — Rights of public officers and employees absent on military duty as members of organized militia or reserve forces, as such rights relate to retirement systems, § 38-2-279(f).

RESEARCH REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d, Pensions and Retirement, § 44; 63C Am. Jur. 2d, Public Officers and Employees, §§ 4, 87 et seq., 103 et seq., 149 et seq. 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 3, 82, 85.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 46 et seq., 95 et seq.

ALR. — Constitutionality of welfare Acts for veterans of World War, 22 ALR 1542.

Re-employment or reinstatement of public officer or employee as restoration of original status as regards incidental rights privileges, 89 ALR 684.

Constitutionality of statutes providing for bounty or pension for soldiers, 147 ALR 1432; 156 ALR 1458.

Re-employment of discharged servicemen, 29 ALR2d 1279; 9 ALR Fed. 225.

Applicability to fringe benefits of Vietnam Era Veterans' Readjustment Assistance Act provision establishing veterans' reemployment rights (38 USCS sec. 2021), 83 ALR Fed. 908.

47-1-7. Powers of retirement, pension, or emeritus systems or funds with regard to agents employed to act as custodians of assets or investment advisers.

The board of trustees or other person or body having the power to manage, invest, and reinvest the assets of any retirement, pension, or emeritus system or fund created under the laws of this state may authorize any agent, including a bank or trust company, employed to act as custodian of such assets or to act as an investment adviser and to make investments for such retirement, pension, or emeritus system or fund, provided that such agent has a nominee or nominees in whose name securities, including, without limitation, bonds, stocks, notes, and other evidence of title to intangible personal property, held by the agent may be registered, to register securities which are held under the terms of such agency in the name of the nominee or nominees, without mention of the agency relationship in the instrument evidencing such securities or on the books of the issuing entity. The records of such agent shall at all times clearly show that such securities are held in such agency capacity and shall indicate the beneficial owner of the securities. Such agent shall not be relieved of liability for the safe custody, control, and proper distribution of such securities or the income therefrom by reason of the registration of those securities in the name of any nominee. The authorization of any such agent to register securities in the name of such nominees shall be in writing and may contain such other restrictions as the board of trustees or other person or body charged with the management and investment of the assets of any such retirement, pension, or emeritus system or fund may deem appropriate. (Ga. L. 1972, p. 427, § 1; Ga. L. 1987, p. 146, § 1; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “adviser” for “advisor” in the middle of the first sentence.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-1-8. Restrictions on ability of members of the General Assembly to receive pension plan credit for service in the General Assembly.

No person becoming a member of the General Assembly for the first time on or after July 1, 1984, shall be entitled to receive or shall receive any creditable service under any local retirement or pension system for service

as a member of the General Assembly unless the law, ordinance, or resolution which is the source of authority for such local retirement or pension system specifically authorizes creditable service to be obtained under such local retirement or pension system for service in the General Assembly. (Code 1981, § 47-1-8, enacted by Ga. L. 1984, p. 758, § 1.)

Cross references. — Crediting of time served in General Assembly to pension plan of political subdivision, § 28-1-9.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.

47-1-9. Crediting of time toward Georgia Legislative Retirement System; restriction on crediting; options for members; refund of contributions; construction of conflicting provisions.

(a) Except as provided by subsection (b) of this Code section, any member of the General Assembly holding office on January 1, 1986, may obtain creditable service for membership in the General Assembly obtained on and after that date only for the purposes of the Georgia Legislative Retirement System, and no service as a member of the General Assembly which is obtained after December 31, 1985, by any such member shall be creditable or used as creditable service for the purposes of any other public retirement or pension system of this state.

(b)(1) Subject to the limitations of paragraph (2) of this subsection, the provisions of subsection (a) of this Code section shall not apply to any member of the General Assembly holding office on January 1, 1986, who:

(A) Was a member of the Employees' Retirement System of Georgia on that date; and

(B) Received annual compensation as a member and officer of the General Assembly during calendar year 1985, on which employee contributions to the Employees' Retirement System of Georgia were based, exceeding the average annual compensation of all members of the Employees' Retirement System of Georgia for calendar year 1985.

(2) Any member of the General Assembly subject to the provisions of paragraph (1) of this subsection who continues to receive annual compensation on and after January 1, 1986, as a member and officer of the General Assembly exceeding the average annual compensation of all members of the Employees' Retirement System of Georgia may continue membership in said retirement system.

(c) Any person becoming a member of the General Assembly after December 31, 1985, shall be eligible to obtain creditable service as a

member of the General Assembly only for the purposes of the Georgia Legislative Retirement System, and no service as a member of the General Assembly which is obtained on or after January 1, 1986, by any such person shall be creditable or used as creditable service for the purposes of any other public retirement or pension system of this state.

(d) Notwithstanding any provisions of Chapter 6 of this title or any other law, any member of the General Assembly may withdraw from membership in the Georgia Legislative Retirement System and receive a refund of contributions to such system under Code Section 47-6-85. Any member exercising the option provided by this subsection may not at any time thereafter reestablish membership in the Georgia Legislative Retirement System or become a member of any public retirement or pension system while serving as a member of the General Assembly.

(e) The provisions of this Code section shall control over conflicting or inconsistent provisions of any other law of this state, specifically including any law relating to any public retirement or pension system of this state. It is the intention of the General Assembly that this Code section may not be repealed, superseded, or modified by implication through the enactment of any other law or through the amendment of any existing law, and any modification or repeal of the requirements of this Code section shall be accomplished only by amendment to or repeal of this specific Code section. (Code 1981, § 47-1-9, enacted by Ga. L. 1985, p. 1334, § 1; Ga. L. 1987, p. 146, § 1; Ga. L. 2010, p. 1207, § 2/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted the former last sentence of paragraph (b)(2), which read: "If during any calendar year the annual compensation of any such member of the General Assembly is equal to or less than the average annual compensation of all members of the Employees' Retirement System of Georgia for that calendar year, then on the first day of January immediately following such calendar year such member of the General Assembly shall be subject to the provisions of subsection (c) of this Code section, and for the purposes of this paragraph, any reference in said subsection (c) to January 1, 1986, shall mean the first day of January immediately following such calendar year."; deleted former subsection (c); and redesignated former subsections (d) through (f) as present subsections (c) through (e), respectively.

Editor's notes. — Ga. L. 1985, p. 1334, § 3, not codified by the General Assembly, provided that that Act would become effective for administrative purposes upon its approval by the Governor or upon its other-

wise becoming law and would become effective for all purposes on January 1, 1986. The Act was approved April 10, 1985.

Ga. L. 1985, p. 1334, § 2, not codified by the General Assembly, provided as follows: "This Act is pursuant to the authority of Article III, Section X, Paragraph VI of the Constitution and pursuant to the specific authority of subparagraph (d) of said Paragraph VI, this Act is exempt from the provisions of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, known as the 'Public Retirement Systems Standards Law.'"

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized

and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any

such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

OPINIONS OF THE ATTORNEY GENERAL

Transfer of legislative time not permitted. — Legislator exercising an election to become a member of the Legislative Retirement System pursuant to the 1979 amendment of the Employees Retirement System Act cannot transfer that legislative time to

the Employees Retirement System upon later assuming a position which entitles the legislator to membership in the Employees Retirement System. 1991 Op. Att’y Gen. No. 91-6.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.

47-1-10. Adoption, amendment, or repeal of rules by boards of trustees of state retirement or pension systems; procedure; immediate adoption; filing of rules with Secretary of State; adoption of rules and regulations appropriate or necessary to maintain qualified status.

(a) As used in this Code section, the term:

(1) “Board of trustees” means the board of trustees or other administrative body or agency charged with the duty of administering any public retirement or pension system created by this title, except the Board of Trustees of the Georgia Municipal Employees Benefit System provided for by Chapter 5 of this title.

(2) “Employer” means a state department, official, or agency of the state or a local board of education, local elected official, or a local political subdivision which employs members.

(3) “Member” means a member of a public retirement or pension system created by this title.

(4) “Member organization” means any association of public employees or officials whose membership consists primarily of members of a public retirement or pension system created by this title.

(5) “Rule” means any rule or regulation adopted by a board of trustees for the administration or to aid in the administration of a public retirement or pension system created by this title, except rules or regulations governing or relating to the investment of the funds or assets of any such retirement or pension system by any such board of trustees.

(6) “Small retirement system” means any public retirement or pension system created by this title which has less than 200 members.

(b) Prior to the adoption, amendment, or repeal of any rule, a board of trustees shall:

(1) Give at least 30 days' notice of the intended action. The notice shall include an exact copy of the proposed rule, the date on which the board of trustees will consider the adoption of the rule, and the time and place where the board of trustees shall meet for such purpose. The notice shall also contain a citation of the authority pursuant to which the rule is proposed for adoption and, if the proposal is an amendment to or repeal of an existing rule, the existing rule shall be clearly identified. The notice shall be mailed to all members of the respective retirement or pension system who have requested in writing to the board of trustees to be placed on a mailing list for proposed rules, provided that such mailing list shall not exceed 200 such members. If more than 200 members request to be placed on such mailing list, the board of trustees shall confine the list to the first 200 members making written request to the board of trustees to be placed on the mailing list. The board of trustees of any small retirement system may, at its discretion, mail the notice to all members. The notice shall also be mailed to employers and to member organizations of the respective public retirement or pension systems. Employers shall post such notices on bulletin boards for their respective employees and shall otherwise take reasonable steps to assure that members of the respective retirement or pension systems are made aware of the notice; and

(2) Afford members of the retirement or pension system affected by the proposed rule a reasonable opportunity to submit to the board of trustees, in writing, data, views, or arguments relative to the proposed rule. Any such submissions received by the board of trustees prior to the adoption of the proposed rule shall be considered by the board of trustees.

(c) At the time of the distribution of the notices required by paragraph (1) of subsection (b) of this Code section, the respective boards of trustees shall transmit a copy of such notices to each member of the House and Senate standing committees on retirement for review by such committees. If, prior to the adoption of the rule by the respective board of trustees, the chairman of either such committee notifies such board of trustees that the committee objects to the adoption of the rule or has questions concerning the purpose, nature, or necessity of the rule, it shall be the duty of such board of trustees to consult with the committee prior to the adoption of the rule.

(d) If a board of trustees finds that the immediate adoption of a rule is necessary to secure or protect the interests of the members of its respective public retirement or pension system, such rule may be adopted on an emergency basis without following the procedures required by this Code section. In that event, the board of trustees shall adopt a resolution

declaring the existence of an emergency and explaining the basis for such declaration as a condition necessary to adopt a rule on an emergency basis. Any rule adopted pursuant to the authority of this subsection shall expire in not more than 120 days immediately following its adoption, but the adoption of an identical rule pursuant to the requirements of this Code section is not precluded.

(e)(1) By not later than January 1, 1986, each board of trustees shall file with the Secretary of State a certified copy of all rules which were adopted by such board of trustees during the period beginning on January 1, 1979, and ending on July 1, 1985. Any rule adopted by a board of trustees during such period which is not filed with the Secretary of State by January 1, 1986, shall be void and of no force and effect after January 1, 1986. It shall not be necessary for rules adopted by boards of trustees prior to January 1, 1979, to be filed with the Secretary of State and such rules shall continue in force and effect until repealed by the respective boards of trustees, but if any such rule is amended on or after July 1, 1985, the original rule as amended shall be filed with the Secretary of State.

(2) Except pursuant to the authority of subsection (d) of this Code section, each rule adopted by a board of trustees on or after July 1, 1985, shall not become effective until the expiration of at least 20 days after an original and two copies of the rule are filed in the office of the Secretary of State.

(3) Rules which are required to be filed with the Secretary of State by paragraphs (1) and (2) of this subsection shall contain a citation of the authority pursuant to which the rules were adopted and, when existing rules are amended, the filings required by this subsection shall clearly identify the existing rules. The Secretary of State shall endorse on each filing required by this subsection the time and date of the filing and shall maintain a file of the rules for public inspection. The provisions of this subsection relative to rules adopted on or after July 1, 1985, shall not be construed to require a rule to go into effect 20 days after filing with the Secretary of State if the rule, by its own terms, provides for a later effective date. Rules filed with the Secretary of State pursuant to this subsection shall be published by the Secretary of State as a part of the rules of state agencies published by the Secretary of State pursuant to Code Section 50-13-7.

(f) Each board of trustees shall be authorized to adopt rules and regulations which are appropriate or necessary to maintain the qualified status of its respective public retirement and pension system under Sections 401(a) and 414(d) of the federal Internal Revenue Code and such other applicable sections of the federal Internal Revenue Code. (Code 1981, § 47-1-10, enacted by Ga. L. 1985, p. 1638, § 1; Ga. L. 1990, p. 190, § 2; Ga. L. 2009, p. 947, § 1/HB 202.)

The 2009 amendment, effective May 11, 2009, added subsection (f).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313.

47-1-11. Creditable service not allowed for military service from which discharge was other than honorable.

(a) As used in this Code section, the term:

(1) “Creditable service” means any period of time which may be used as a factor in the computation of any benefit under a public retirement system.

(2) “Military service” means service in the armed forces of the United States or in a reserve component of the armed forces of the United States, including the National Guard.

(3) “Public employee” means elected and appointed officials and employees of the state or any branch, department, board, bureau, commission, authority, or other agency of the state and elected and appointed officials and employees of any political subdivision of the state or of any authority or other agency of any such political subdivision.

(4) “Public retirement system” means any retirement or pension system now or hereafter created by or pursuant to the authority of Georgia law or the Constitution of Georgia which has public employees as members of the retirement or pension system.

(5) “Source of authority” means the law, resolution, or ordinance which creates or provides for a public retirement system.

(b) Only military service for which a person was discharged or separated under honorable conditions shall be eligible to be counted as military service for the purpose of obtaining creditable service under any public retirement system, whether presently existing or hereafter created, when the source of authority for such public retirement system authorizes military service to be used as a basis to obtain creditable service under such public retirement system.

(c) The provisions of this Code section are a limitation on the use of military service as creditable service under any public retirement system and shall not be construed to create a right to obtain creditable service for military service under any public retirement system when such right does not exist independently of this Code section. (Code 1981, § 47-1-11, enacted by Ga. L. 1986, p. 1233, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, Code Section 47-1-11, as enacted by Ga. L. 1986, p. 1240, § 1, was redesignated as Code Section 47-1-12.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

47-1-12. Investment and reinvestment of assets of local retirement system; valuation and limitation on investments; duties of state auditor.

(a) The board of trustees of any local retirement system shall have full power to invest and reinvest assets of the retirement system and to purchase, hold, sell, assign, transfer, and dispose of any securities and other investments in which assets of the retirement system have been invested, any proceeds of any investments, and any money belonging to the retirement system; provided, however, that, except as otherwise provided in this Code section, such power shall be subject to all terms, conditions, limitations, and restrictions imposed by the laws of this state upon domestic life insurance companies in making and disposing of their investments.

(b) Notwithstanding the provisions of Code Section 33-11-21, the board of trustees of any local retirement system shall not be restricted to investing in those equities which have paid a cash dividend in at least three of the last five years preceding the purchase of such equities.

(c) Nothing in this Code section shall be construed to limit or restrict the authority of the board of trustees of any retirement system to invest or reinvest assets of such system in such manner and under such conditions as are authorized by law.

(d) The state auditor shall monitor the investment activity of local retirement systems and shall submit a report to the Governor and the presiding officer of each chamber of the General Assembly describing the effect, if any, changes in investment policy have had on those systems. Such report shall be submitted not later than December 31, 2001. (Code 1981, § 47-1-12, enacted by Ga. L. 1986, p. 1240, § 1; Ga. L. 1996, p. 651, § 3; Ga. L. 1998, p. 126, § 1; Ga. L. 2000, p. 2, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, Code Section 47-1-11, as enacted by Ga. L. 1986, p. 1240,

§ 1, was redesignated as Code Section 47-1-12.

47-1-13. Maximum compensation used in computing employee and employer contributions.

(a) As used in this Code section, the term “eligible member” means a person who became a member of a public retirement or pension system prior to the plan year beginning after December 31, 1995.

(b) Any other provision of law to the contrary notwithstanding, the maximum compensation used in computing employee and employer

contributions to or benefits due from any public retirement or pension system shall be the maximum compensation set forth in Section 401(a)(17) of the federal Internal Revenue Code, as now or hereafter amended; provided, however, that pursuant to Section 13212(d)(3)(A) of the federal Omnibus Budget Reconciliation Act of 1993 and the regulations issued under such section, eligible members are not subject to the limits of Section 401(a)(17) of the federal Internal Revenue Code, and the maximum compensation used for such computations for eligible members shall be the maximum amount allowed by the respective retirement or pension system to be so used on July 1, 1993. (Code 1981, § 47-1-13, enacted by Ga. L. 1995, p. 351, § 1; Ga. L. 2009, p. 947, § 2/HB 202.)

The 2009 amendment, effective May 11, 2009, in subsection (b), inserted “federal” and inserted “pursuant to Section 13212(d)(3)(A) of the federal Omnibus Budget Reconciliation Act of 1993 and the regulations issued under such section, eligible members are not subject to the limits of Section 401(a)(17) of the federal Internal Revenue Code, and” near the middle, and

substituted “members” for “employees” near the end.

U.S. Code. — The United States Internal Revenue Code Section 401(a)(17), referred to in subsection (b), is codified in 26 U.S.C. § 401.

The Omnibus Budget Reconciliation Act of 1993, referred to in subsection (b), can be found at Pub. L. 103-66.

47-1-13.1. Annual compensation limits in determining benefits or contributions due.

(a) As used in this Code section, the term:

- (1) “Annual compensation” means compensation during the determination period. Such term shall include any cost-of-living adjustment in effect for a calendar year if the determination period begins with or within such calendar year.
- (2) “Determination period” means the plan year or such other consecutive 12 month period over which compensation is otherwise determined under the public retirement or pension system.

(b) The annual compensation of a plan member during any plan year beginning on or after January 1, 2002, which exceeds \$200,000.00, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the federal Internal Revenue Code, shall not be taken into account in determining benefits or contributions due from the public retirement or pension system for any plan year. If the determination period consists of fewer than 12 months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a plan member’s contributions or benefits for the current plan year, the compensation for such prior determination period shall be

subject to the applicable annual compensation limit in effect for the prior period.

(c) The annual compensation of a plan member during any plan year beginning on and after January 1, 1996, and before January 1, 2002, which exceeds \$150,000.00, as indexed as provided in Section 401(a)(17)(B) of the federal Internal Revenue Code, shall be disregarded for purposes of computing contributions to or benefits due from the public retirement or pension system. (Code 1981, § 47-1-13.1, enacted by Ga. L. 2009, p. 947, § 3/HB 202; Ga. L. 2010, p. 1207, § 64/SB 436.)

Effective date. — This Code section became effective May 11, 2009.

The 2010 amendment, effective July 1, 2010, substituted “section, the” for “section the” in the introductory paragraph of subsection (a) and substituted “cost-of-living” for “cost of living” in the second sentence of paragraph (a)(1).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and

the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

47-1-14. “Retirement system” defined; records exempt from public inspection.

(a) As used in this Code section, the term “retirement system” means any public retirement system created by this title. Such term also means any association of like political subdivisions the purpose of which is the pooling of funds for retirement or pension purposes.

(b) Any other provision of law to the contrary notwithstanding, the following records maintained by a retirement system are exempted from being open to inspection by the general public:

- (1) Records containing wiring or automated clearing house transfer of funds instructions or access codes;
- (2) Records containing bank account numbers;
- (3) All proprietary computer software; and
- (4) Any business, financial, or personal information in the possession of such retirement system concerning a party other than such retirement system.

(c) Any other provision of law to the contrary notwithstanding, the following records maintained by a retirement system are exempted from being open to inspection by the general public for a period of one year from the date such records were created:

- (1) Records containing investment advice rendered by any investment adviser or retirement system employee;
- (2) Exhibits to minutes of retirement system board meetings or investment committee board meetings which contain securities trading information;
- (3) Securities trade tickets, confirmations, and other records pertaining to securities trades; and
- (4) Records which contain proposed terms of sale for real property owned by a retirement system; provided, however, that the records defined in this paragraph shall be subject to disclosure at any time after the sale of real property is consummated.

(d) Any other provision of law to the contrary notwithstanding, the following records maintained by a retirement system are exempted from being open to inspection by the general public until the end of the calendar quarter following the calendar quarter in which the record is created:

- (1) Records which contain information relating to the investment portfolio composition and positions; and
- (2) Exhibits to minutes of retirement system board meetings or investment committee board meetings which contain information relating to investment portfolio composition and positions.

(e) The provisions of subsections (b), (c), and (d) of this Code section shall not restrict access to records:

- (1) By an employee of a retirement system in the course of his or her official duties;
- (2) Subject to subpoena or other legal process of a court or administrative agency having competent jurisdiction in legal proceedings in which the state or a retirement system is a party;
- (3) In criminal prosecutions or other criminal actions brought by state or federal law enforcement authorities;
- (4) Given to federal or state regulatory or law enforcement agencies in the course of their official duties; or
- (5) Given to the Attorney General and the Department of Law, the Office of Planning and Budget, the state accounting officer and the State Accounting Office, or the state auditor and the Department of Audits and Accounts for use and public disclosure in the ordinary performance of

those officers' and offices' duties. (Code 1981, § 47-1-14, enacted by Ga. L. 1997, p. 44, § 1; Ga. L. 2002, p. 1246, § 1; Ga. L. 2005, p. 694, § 39/HB 293; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “adviser” for “advisor” in paragraph (c)(1).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-1-15. Circumstances when survivors benefits are paid to secondary beneficiary.

Unless otherwise expressly stated elsewhere in this title, in the event a person designated by a member of a public retirement or pension system created by this title as the primary beneficiary of a survivors benefit provided by such system does not survive the member by at least 32 days, any such benefits shall be paid to the secondary beneficiary, or as otherwise provided by law. (Code 1981, § 47-1-15, enacted by Ga. L. 1998, p. 176, § 1; Ga. L. 2000, p. 131, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, Code Section 47-1-14, as enacted by Ga. L. 1998, p. 176,

§ 1, was renumbered as Code Section 47-1-15.

ARTICLE 2

RESTRICTIONS AND PROHIBITIONS ON MEMBERSHIP IN PUBLIC RETIREMENT OR PENSION SYSTEMS

OPINIONS OF THE ATTORNEY GENERAL

Forfeiture of benefits by employees convicted of crime. — General Assembly has the authority to enact a statute which proposes the forfeiture of earned retirement benefits of future public employees due to the conviction of a crime; however, an amendment to the Georgia Constitution proposing such

a forfeiture by employees who are currently by law vested with rights under the public retirement system would, in all probability, be unconstitutional under the federal Impairment Clause contained in U.S. Const., Art. I, Sec. 10. 1985 Op. Att’y Gen. No. U85-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d, Pensions and Retirement Funds, § 37, 39.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.

47-1-20. Definitions.

As used in this article, the term:

(1) “Conviction” means a judgment of conviction for the commission of a crime which is entered upon a verdict or plea of guilty.

(1.1) “Drug related crime” means a felony specified in subsection (b) of Code Section 16-13-30 and any felony specified in Code Section 16-13-31.

(1.2) “Economic impact of a public employment related crime” means the total of the economic gain to the perpetrator of a public employment related crime and the economic loss to the public entity.

(2) “Employee contribution” means that part of the compensation of a public employee which is paid by the employee or by the employer on the employee’s behalf to a public retirement system as a requirement for membership in the public retirement system.

(3) “Final conviction” means a conviction which has been upheld after the convicted person has exhausted all appeals of the conviction.

(4) “Political subdivision” means any county, municipality, or local school district.

(5) “Public employee” means elected and appointed officials and employees of the state or any branch, department, board, bureau, commission, authority, or other agency of the state and elected and appointed officials and employees of any political subdivision or authority or other agency of a political subdivision.

(6) “Public employment related crime” means any one or more of the following crimes:

(A) Theft as provided in any one or more of Code Sections 16-8-2 through 16-8-9 when the theft is by an officer or employee of a government in breach of duties as such officer or employee and conviction for such crime is punishable under paragraph (3) of subsection (a) of Code Section 16-8-12;

(B) Any felony provided for in Article 1 of Chapter 10 of Title 16, relating to abuse of governmental office;

(C) Making false statements or concealing facts in matters within the jurisdiction of the state or a political subdivision as provided in Code Section 16-10-20;

(D) Conspiracy to defraud the state or a political subdivision as provided in Code Section 16-10-21;

(E) Stealing, altering, or concealing public records as provided in Code Section 45-11-1;

(F) Selling offices or dividing fees as provided in Code Section 45-11-2; and

(G) Any felony conviction for any of the crimes specified in subparagraphs (A) through (E) of this paragraph under the laws of any other state or the United States; provided, however, that the provisions of this subparagraph shall apply to persons who first or again become members of a public retirement system on or after July 1, 2008.

(7) “Public retirement system” means any retirement or pension system now or hereafter created by or pursuant to the authority of Georgia law or the Constitution of Georgia which has public employees as members of the retirement or pension system.

(8) “Vested” means having sufficient creditable service as a member of a public retirement system to qualify to receive a retirement benefit upon retirement or termination from public service or upon attaining retirement age if public service is terminated prior to attaining such age. (Code 1981, § 47-1-20, enacted by Ga. L. 1985, p. 1624, § 1; Ga. L. 1990, p. 2019, § 1; Ga. L. 2004, p. 365, § 1; Ga. L. 2008, p. 126, §§ 1, 2/HB 255; Ga. L. 2009, p. 368, § 1/SB 48.)

The 2008 amendment, effective July 1, 2008, added paragraph (1.2); in subparagraph (6)(E), deleted “and” from the end; in subparagraph (6)(F), substituted “; and” for a period at the end; and added subparagraph (6)(G).

The 2009 amendment, effective April 30,

2009, part of an Act to revise, modernize, and correct this title, in paragraph (1.2), substituted “public employment related” for “public related” and substituted “a public employment related” for “an employment related”.

JUDICIAL DECISIONS

Cited in *City of Atlanta v. Jackson*, 263 Ga. 426, 435 S.E.2d 212 (1993).

47-1-21. Termination of membership in public retirement system for committing public employment related crimes; applicability to employees on July 1, 1985; determination of benefits.

(a) This Code section shall apply to public employees in service on July 1, 1985, as long as such employees remain in continuous service as public employees. Any public employee in service on July 1, 1985, who ceases to be a public employee on or after that date and who subsequently again becomes a public employee shall be subject to the provisions of Code Section 47-1-22 upon again becoming a public employee. Any person who was a public employee prior to July 1, 1985, and who ceased to be a public employee prior to that date shall be subject to the provisions of Code Section 47-1-22 if such person again becomes a public employee after July 1, 1985.

(b) If a public employee commits a public employment related crime on or after July 1, 1985, in the capacity of a public employee and is convicted for the commission of such crime, such employee’s membership in any public retirement system shall terminate on the date of final conviction and such employee shall not at any time thereafter be eligible for membership in any public retirement system. For any such public employee finally convicted for the commission of a public employment related crime, the right to any benefit or any other right under any public retirement system in which the employee is a member shall be determined as of the date of final conviction. (Code 1981, § 47-1-21, enacted by Ga. L. 1985, p. 1624, § 1.)

47-1-22. Reduction and forfeiture of rights and benefits by public employees after July 1, 1985, for committing public employment related crimes; reimbursement of contributions.

(a) This Code section shall apply to public employees first or again becoming public employees after July 1, 1985.

(b) If a public employee commits a public employment related crime in the capacity of a public employee and is convicted for the commission of such crime, upon final conviction such person’s benefits under a public retirement or pension system, including any survivor’s benefits if applicable, shall be reduced by an amount equal to three times the economic impact of the crime, as determined pursuant to the provisions of Code Section 47-1-25. Payment of such benefits shall cease until such amount has been forfeited, after which benefits shall be restored. If the person has not begun to receive a benefit, the deduction shall commence at the time such benefits would normally begin. For purposes of this subsection, the term “benefit” shall not include a refund of employee contributions without interest. (Code 1981, § 47-1-22, enacted by Ga. L. 1985, p. 1624, § 1; Ga. L. 2008, p. 126, § 3/HB 255.)

The 2008 amendment, effective July 1, 2008, rewrote subsection (b).

JUDICIAL DECISIONS

<p>Former councilman’s alleged fraud in obtaining commissioner’s position on aviation board had no legal effect on the pension benefits to be awarded the person under</p>	<p>O.C.G.A. Art. 2, Ch. 1, T. 47. <i>City of Atlanta v. Jackson</i>, 263 Ga. 426, 435 S.E.2d 212 (1993).</p>
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47-1-22.1. Rights and benefits of employees convicted of drug related crimes.

(a) Except as otherwise provided in this subsection, this Code section shall not apply to any public employee in service on July 1, 1990, and shall

apply only to those public employees entering public service after July 1, 1990. A public employee in service on July 1, 1990, who ceases to be a public employee and terminates his or her membership in a public retirement system after that date and who subsequently again becomes a public employee shall be subject to the provisions of this Code section, beginning with the date of such subsequent employment. Any person who was a public employee prior to July 1, 1990, and who ceased to be a public employee and terminated his or her membership in a public retirement system prior to that date shall be subject to the provisions of this Code section if such person again becomes a public employee after July 1, 1990, beginning with the date of such subsequent employment.

(b) If a public employee who is not vested under a public retirement system commits a drug related crime and is convicted for the commission of such crime, such public employee shall forfeit all rights and benefits under and membership in the public retirement system in which the employee is not a vested member, effective on the date of final conviction. Any such public employee shall not at any time after such final conviction be eligible for membership in any public retirement system. Any employee contributions made by any such public employee to any public retirement system in which the employee is not a vested member shall be reimbursed, without interest, to the public employee within 60 days after the date of final conviction for the commission of the drug related crime.

(c) If a public employee who is vested under a public retirement system commits a drug related crime, such employee's active membership in any public retirement system shall terminate on the date of final conviction and such employee shall not at any time thereafter be eligible for active membership in any public retirement system. For any such public employee, the right to any benefit or any other right under any public retirement system in which the employee is a vested member shall be determined as of the date of final conviction.

(d) The provisions of Code Section 47-1-23 shall apply to a public employee charged with the commission of a drug related crime in the same manner that they apply to a public employee charged with the commission of a public employment related crime. (Code 1981, § 47-1-22.1, enacted by Ga. L. 1990, p. 2019, § 2.)

JUDICIAL DECISIONS

Former councilman's alleged fraud in obtaining commissioner's position on aviation board had no legal effect on the pension benefits to be awarded the individual under

O.C.G.A. Art. 2, Ch. 1, T. 47. City of Atlanta v. Jackson, 263 Ga. 426, 435 S.E.2d 212 (1993).

47-1-22.2. Notification to public retirement system of conviction for public employment related crime.

Upon the final conviction of any person for a public employment related crime, the prosecuting attorney shall so notify the defendant's former public employer and any public retirement system in which he or she knows the convicted public employee to be an active, inactive, or retired member. Upon such notification, the public employer shall also notify any such public retirement system. (Code 1981, § 47-1-22.2, enacted by Ga. L. 2008, p. 126, § 4/HB 255.)

Effective date. — This Code section became effective July 1, 2008.

47-1-23. Rights of public employee charged with committing public employment related crime.

Nothing in this article shall be construed to create a right for any public employee who is charged with the commission of a public employment related crime to remain a public employee or a member of a public retirement system until such employee is finally convicted for the commission of such crime. Nothing in this article shall be construed to create a right for a public employee who is charged with the commission of a public employment related crime to accrue rights or benefits under a public retirement system after the date any such employee ceases to be a member of such public retirement system. (Code 1981, § 47-1-23, enacted by Ga. L. 1985, p. 1624, § 1.)

47-1-24. Benefits denied to beneficiary who murders or commits voluntary manslaughter of member of public retirement system.

No person who commits or conspires to commit the murder or voluntary manslaughter of a member, retiree, or beneficiary under a public retirement system shall receive any refund of contributions or any benefit under the public retirement system upon the death of the member, retiree, or beneficiary, even though the person so killing or conspiring is a named beneficiary for such refund of contributions or benefit. A plea of guilty or a judicial finding of guilt which is not reversed or otherwise set aside as to any such crime shall be prima-facie evidence of guilt for the purpose of applying the provisions of this Code section. All rights, interests, and entitlements to any such refund of contributions or benefit shall go to the secondary beneficiary designated by the member, retiree, or beneficiary, if a secondary beneficiary is designated and is living, upon the death of the member, retiree, or beneficiary, but otherwise to the member's, retiree's, or beneficiary's estate. (Code 1981, § 47-1-24, enacted by Ga. L. 1990, p. 690, § 1.)

47-1-25. Determination of economic impact of public employment related crime.

Within 30 days following the day the board of trustees receives notice that a member of the retirement system has been convicted of a public employment related crime, the board shall initiate proceedings in the Office of State Administrative Hearings, under the provisions of Article 2 of Chapter 13 of Title 50, to determine the economic impact of the public employment related crime. Such matter shall be deemed to be a contested case within the meaning of such article. The Department of Law shall represent the board of trustees in such proceedings. The decision of the administrative law judge shall be final unless appeal is made as otherwise provided by law. (Code 1981, § 47-1-25, enacted by Ga. L. 2008, p. 126, § 5/HB 255; Ga. L. 2009, p. 368, § 1/SB 48.)

Effective date. — This Code section became effective July 1, 2008.

The 2009 amendment, effective April 30, 2009, part of an Act to revise, modernize, and correct this title, substituted “a public

employment related” for “an employment related” and substituted “the public employment related” for “the employment related” in this Code section.

ARTICLE 3

INCREASE OF BENEFITS TO OFFSET TAXES

47-1-30. Authority to increase benefits.

(a) As used in this Code section, the term:

(1) “Board of trustees” means the board of trustees or other fiscal authority or governing body, by whatever name designated, of a retirement system.

(2) “Retirement system” means a retirement or pension system or fund created by or pursuant to the authority of Georgia law which was listed in paragraph (4) of subsection (a) of Code Section 48-7-27 on January 1, 1989.

(b) The board of trustees of a retirement system is authorized to increase benefits paid to both present and future retirees and beneficiaries under the retirement system to offset, wholly or partially, the taxation of retirement benefits pursuant to the provisions of Chapter 7 of Title 48, relating to Georgia income taxes, provided that any increase in benefits granted pursuant to the authority of this subsection:

(1) Shall not apply to any portion of a benefit which exceeds \$37,500.00 on the date the benefit increase is granted; and

(2) Shall be consistent with maintaining the actuarial soundness of the retirement system in conformity with minimum funding requirements of Code Section 47-20-10.

(c) The provisions of this Code section are in addition to any powers possessed by a board of trustees pursuant to the provisions of any other law. (Code 1981, § 47-1-30, enacted by Ga. L. 1990, p. 879, § 1; Ga. L. 1991, p. 605, § 1.)

47-1-31. Discretionary postretirement benefit increases subject to reduction by subsequent legislation.

Any other provision of this title to the contrary notwithstanding, any discretionary postretirement benefit increase granted on or after July 1, 1993, by the board of trustees of any public retirement system pursuant to the authority to grant such increases within the limits of actuarial soundness granted by general law shall be subject to reduction by subsequent legislation and shall not be considered an element of any contract of employment. (Code 1981, § 47-1-31, enacted by Ga. L. 1993, p. 1690, § 1.)

ARTICLE 4

CREDITABLE SERVICE DURING TEMPORARY DISABILITY

47-1-40. Definitions.

As used in this article, the term:

(1) “Public employee” means an active member of a retirement system defined in paragraph (2) of this Code section.

(2) “Retirement system” means:

(A) The Employees’ Retirement System of Georgia provided for in Chapter 2 of this title;

(B) The Teachers Retirement System of Georgia provided for in Chapter 3 of this title; and

(C) The Public School Employees Retirement System provided for in Chapter 4 of this title.

(3) “Temporary disability” means a physical or mental illness, sickness, or disorder caused by job-related disease or accident which causes a public employee to cease receiving compensation as an active public employee to the extent that the employee loses all or a portion of the period of temporary disability as creditable service under the employee’s respective retirement system, but the term does not include any period of disability during which the employee qualifies for a disability benefit under the respective retirement system or any period of disability for which the employee may receive creditable service under the provisions of the employee’s respective retirement system. (Code 1981, § 47-1-40, enacted by Ga. L. 1994, p. 868, § 1.)

47-1-41. Employees authorized to receive creditable service for period of temporary disability; application for creditable service; payment of employee contributions during period.

A public employee may receive creditable service under the public employee's respective retirement system for a maximum of 12 months of temporary disability. A public employee wishing to obtain such creditable service shall apply to the board of trustees or other official or body administering the respective retirement system within not more than six months after returning to service immediately following the temporary disability. The public employee shall be required to pay the employee contributions that would have been paid during the period of temporary disability which is claimed for creditable service plus regular interest, as determined by the respective board of trustees or other official or body administering the respective retirement system, compounded from the period of disability for which creditable service is claimed to the date of payment. Such employee contribution shall be based on the compensation the public employee was receiving for employee contribution purposes immediately prior to becoming temporarily disabled. (Code 1981, § 47-1-41, enacted by Ga. L. 1994, p. 868, § 1.)

47-1-42. Use of other provisions of article not precluded.

Obtaining creditable service pursuant to the provisions of this article shall not preclude the use of the provisions of this article to obtain creditable service for another future temporary disability, provided that there is a period of at least five years of active service as a contributing member of the respective retirement system between any claims for creditable service under this article. (Code 1981, § 47-1-42, enacted by Ga. L. 1994, p. 868, § 1.)

47-1-43. Applicability of article; proof of temporary disability.

The provisions of this article shall apply to periods of temporary disability which occurred prior to July 1, 1994, as well as those which occur on or after that date. The boards of trustees or other officials or bodies administering retirement systems may by rule or regulation require such proof of temporary disability and other documentation as may be reasonably necessary to carry out the provisions of this article. (Code 1981, § 47-1-43, enacted by Ga. L. 1994, p. 868, § 1.)

ARTICLE 5

ESTABLISHING CREDITABLE SERVICE BY VETERANS

47-1-60. Definitions.

As used in this article, the term:

(1) “Creditable service” means service with a public retirement system or fund used in the same manner as actual service in the computation of all rights and benefits.

(2) “Public retirement system or fund” means a public retirement system or fund created by this title.

(3) “Qualified returning veteran” or “returning veteran” means a member of a public retirement system or fund whose employment which qualified him or her for such membership was interrupted by a period of qualified service and who returns to such employment in a manner sufficient to protect his or her reemployment rights as prescribed by Public Law 103-353, the federal Uniformed Services Employment and Reemployment Rights Act.

(4) “Qualified service” means voluntary or involuntary service with one of the uniformed services, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and any period during which a member is absent from employment for the purpose of an examination to determine his or her fitness to perform such duty.

(5) “Uniformed services” means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Marine Corps, Air Force, Air Force Reserve, Air National Guard, Coast Guard, the commissioned corps of the Public Health Service, and any other category of persons designated by the President of the United States in time of war or emergency. (Code 1981, § 47-1-60, enacted by Ga. L. 1996, p. 367, § 1.)

47-1-61. Eligibility of veteran to establish creditable service; period of qualified service.

Any qualified returning veteran shall be eligible to establish creditable service with his or her retirement system or fund for not more than five years of qualified service by complying with the provisions of this article; provided, however, that such five-year period shall be extended by any period of mandatory service imposed by the uniformed service recognized by paragraph (4) of subsection (C) of Section 4312 of federal Public Law 103-353, the Uniformed Service Employment and Reemployment Rights Act of 1994. Notwithstanding any provisions of the law to the contrary, contributions, benefits, and service credits with respect to qualified uniformed service will be provided under each retirement or pension system in accordance with Section 414(u) of the federal Internal Revenue Code. (Code 1981, § 47-1-61, enacted by Ga. L. 1996, p. 367, § 1; Ga. L. 2005, p. 535, § 1/HB 460.)

47-1-62. Procedure for establishment of creditable service; computations; employer contributions; system or fund unable to provide creditable service.

(a) Any qualified returning veteran desiring to establish creditable service for a period of qualified service shall so notify the board of trustees of the public retirement system or fund. The board of trustees shall calculate the amount of employee or member contribution which the returning veteran would have paid if he or she had been a member of the system or fund during the period of qualified service. If such contribution is based on the member's salary, the returning veteran's salary shall be deemed to be the rate the member would have received but for the period of qualified service or, if determination of such rate is not reasonably certain, the member's average rate of compensation during the 12 month period immediately preceding the period of qualified service or such lesser time as the member was employed. The returning veteran shall repay the amount so calculated as his or her employee or member contribution, which payment must be completed not later than three times the length of qualified service or five years, whichever period is shorter, computed from the date the returning veteran resumes employment. The board of trustees of any public retirement system may provide by rule for computing the amount of creditable service on payment of less than the total amount of employee contributions.

(b)(1) At the time a qualified returning veteran applies for creditable service as provided in Code Section 47-1-61, the board of trustees of the public retirement system or fund shall compute the actuarial value of the creditable service to be granted.

(2) The board of trustees of a retirement system or fund which requires employer contributions shall notify the employer of the returning veteran of the actuarial value, less the amount of employee contribution. The employer shall pay such amount to the retirement system over the same period of time allowed for the returning veteran to pay the employee contributions; provided, however, that an employer shall not be required to make any payment until the fiscal year following the year such notice is given.

(3) If the actuary employed by a retirement system or fund created by this title which does not require an employer contribution certifies that the system or fund cannot provide the creditable service requested by one or more returning veterans and retain its actuarial soundness, no discretionary benefit increases shall be granted, and the board of trustees of such system or fund shall notify the Governor and chairpersons of the Senate and House Committees on Retirement, providing a full explanation of the amount of funds necessary to return the system or fund to actuarial soundness.

(4) If a member of a public retirement system dies while performing qualified military service, as such term is defined in Section 414(U) of the federal Internal Revenue Code, the member's beneficiary shall be entitled to all additional benefits to which the beneficiary would have been entitled if the member had resumed employment with the employer, reentered the plan, and died immediately thereafter. Unless otherwise required by Code Section 38-2-279, additional benefits to beneficiaries shall not include benefit accruals for the period of qualified military service.

(5) If an employer pays differential wage payments, as such term is defined in Section 3401(h) of the federal Internal Revenue Code, to a member of a public retirement system while such member is in qualified military service, such payments shall be taken into account as compensation by the public retirement system or fund. (Code 1981, § 47-1-62, enacted by Ga. L. 1996, p. 367, § 1; Ga. L. 2009, p. 325, § 1/HB 477; Ga. L. 2010, p. 427, § 1/HB 969.)

The 2009 amendment, effective April 30, 2009, deleted "not later than six months from the date he or she resumes employment" following "fund" at the end of the first sentence of subsection (a).

The 2010 amendment, effective May 24, 2010, added paragraphs (b)(4) and (b)(5).

U.S. Code. — Section 414(U) of the federal Internal Revenue Code, referred to in paragraph (b)(4), is codified at 26 U.S.C. § 414.

Section 3401 of the federal Internal Revenue Code, referred to in paragraph (b)(5), is codified at 26 U.S.C. § 3401.

ARTICLE 6

CONFORMITY WITH FEDERAL LAW

47-1-80. Distributions to conform to regulations issued under the Internal Revenue Code.

Notwithstanding any other provision of this title to the contrary, distributions from any public retirement or pension system shall conform to a good-faith interpretation of Section 401(a)(9) of the federal Internal Revenue Code and the regulations promulgated pursuant to such section as applicable to a governmental plan within the meaning of Section 414(d) of the federal Internal Revenue Code and shall be implemented in accordance with the grandfathering provisions of such regulations applicable to annuity option distributions in effect on April 17, 2001. (Code 1981, § 47-1-80, enacted by Ga. L. 2005, p. 535, § 2/HB 460; Ga. L. 2009, p. 947, § 4/HB 202.)

The 2009 amendment, effective May 11, 2009, substituted "a good-faith interpretation of" for "the regulations issued under"

and inserted "and the regulations promulgated pursuant to such section" in this Code section.

47-1-80.1. Provisions applicable to all public retirement or pension systems; maximum annuity paid; limitation on death and disability benefits; application of federal provisions.

(a) Notwithstanding any other provision of this title to the contrary, any public retirement or pension system shall be subject to the following provisions:

(1)(A) Benefits shall begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the plan member reaches 70 1/2 years of age or April 1 of the calendar year in which the plan member terminates employment. If a plan member fails to apply for retirement benefits by the required beginning date, the applicable public retirement or pension system shall begin distribution of the benefit as required by Section 401(a)(9) of the federal Internal Revenue Code.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, for any plan member who was entitled to receive a benefit under the public retirement or pension as of December 31, 1996, and attained the age of 70 1/2 on or before December 31, 1998, the required beginning date shall be deemed to be April 1 following the calendar year in which the member attained the age of 70 1/2, regardless of whether the member was then employed by the employer;

(2) A plan member's entire interest shall be distributed over the plan member's life or the lives of the plan member and a designated beneficiary or over a period not extending beyond the life expectancy of the plan member or the life expectancy of the plan member and his or her designated beneficiary;

(3) The life expectancy of a plan member, the plan member's spouse, or the plan member's designated beneficiary shall not be recalculated after the initial determination for purposes of determining benefits;

(4) If a plan member dies after the required distribution of benefits has begun, the remaining portion of the plan member's interest shall be distributed at least as rapidly as under the method of distribution before the plan member's death and no longer than the remaining period over which the distribution commenced; and

(5) If a plan member dies before the required distribution of the plan member's benefits has begun, the plan member's entire interest shall be either distributed in accordance with federal regulations over the life or the life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year of the plan member's death or distributed by December 31 of the calendar year containing the fifth anniversary of the plan member's death.

(b) The amount of an annuity paid to a plan member's designated beneficiary shall not exceed the maximum determined under the incidental death benefit requirements of the federal Internal Revenue Code.

(c) The death and disability benefits provided by the plan shall be limited by the incidental benefit rule set forth in Section 401(a)(9)(G) of the federal Internal Revenue Code and Federal Treasury Regulation Section 1.401-1(b)(1)(i) or any successor to such regulation.

(d) Except as otherwise provided in subsection (e) of this Code section, a member or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the federal Internal Revenue Code shall not receive those distributions for 2009 unless the member or beneficiary chooses to receive such distributions. Such members and beneficiaries shall be given the opportunity to elect to receive such distributions. In addition, notwithstanding the provisions of Code Section 47-1-81, and solely for purposes of applying the direct rollover provisions of the federal Internal Revenue Code, 2009 required minimum distributions shall be treated as eligible rollover distributions. This subsection shall also apply to required minimum distributions after 2009 if federal law is extended to include such later years.

(e) A public retirement or pension system to which subsection (d) of this Code section applies may choose a default option to pay 2009 required minimum distributions unless otherwise elected by the member, provided that the individual system adopt such a default rule for its members only in its plan documents. (Code 1981, § 47-1-80.1, enacted by Ga. L. 2009, p. 947, § 5/HB 202; Ga. L. 2010, p. 427, § 2/HB 969.)

Effective date. — This Code section became effective May 11, 2009.

The 2010 amendment, effective May 24, 2010, added subsections (d) and (e).

U.S. Code. — Section 401 of the federal Internal Revenue Code, referred to in subsection (d), is codified at 26 U.S.C. § 401.

47-1-81. Election to have a portion of an eligible rollover distribution paid to an eligible retirement plan under federal law; limitations; application to nonspouse designated beneficiary.

(a) As used in this Code section, the term:

(1) "Direct rollover" means a payment by the public retirement or pension system subject to this title to the eligible retirement plan specified by the distributee or to the surviving spouse of the distributee.

(2) "Distributee" means:

(A) An employee;

(B) A former employee;

(C) The employee or former employee's surviving spouse; or

(D) A nonspouse beneficiary who is a designated beneficiary as defined in Section 401(a)(9)(E) of the federal Internal Revenue Code.

(3) “Eligible retirement plan” means any of the following that accepts the distributee’s eligible rollover distribution:

(A) An individual retirement account described in Section 408(a) of the federal Internal Revenue Code;

(B) An individual retirement annuity described in Section 408(b) of the federal Internal Revenue Code;

(C) An annuity plan described in Section 403(a) of the federal Internal Revenue Code;

(D) A qualified trust described in Section 401(a) of the federal Internal Revenue Code;

(E) An annuity contract described in Section 403(b) of the federal Internal Revenue Code.

(F) An eligible deferred compensation plan under Section 457(b) of the federal Internal Revenue Code that is maintained by a state, political subdivision or agency or instrumentality of a state, or a political subdivision of a state and which agrees to separately account for amounts transferred into that plan from the public retirement or pension system under this title; and

(G) A Roth IRA described in Section 408A of the federal Internal Revenue Code.

(4) “Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee; provided, however, such term shall not include:

(A) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee’s designated beneficiary or for a specified period of ten years or more;

(B) Any distribution to the extent such distribution is required under Section 401(a)(9) of the federal Internal Revenue Code;

(C) The portion of any distribution that is not includable in gross income; or

(D) Any other distribution that is reasonably expected to total less than \$200.00 during the year.

Such term shall include a distribution to a surviving spouse made on or after January 1, 2002.

(b) Notwithstanding any other provisions of this title to the contrary that would otherwise limit a person's election under this Code section, a member of a retirement or pension system subject to this title may elect, at the time and in the manner prescribed by the board of trustees of such system, to have any portion of an eligible rollover distribution, as such term is defined in Section 402(c) of the federal Internal Revenue Code, paid directly to an eligible retirement plan, as such term is defined in Section 402(c) of the federal Internal Revenue Code, specified by the person in a direct rollover.

(c) A portion of a distribution made on or after January 1, 2002, shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income; provided, however, that such portion may be transferred only to:

(1) An individual retirement account or annuity described in Section 408(a) or (b) of the federal Internal Revenue Code;

(2) A qualified defined contribution plan described in Section 401(a) or 403(a) of the federal Internal Revenue Code;

(3) A qualified defined benefit plan described in Section 401(a) of the federal Internal Revenue Code; or

(4) An annuity contract described in Section 403(b) of the federal Internal Revenue Code which agrees to account separately for amounts so transferred, and earnings thereon, including accounting separately for the portion of such distribution that is includable in gross income and the portion that is not so includable.

(d) Notwithstanding any other provision of this title to the contrary, a nonspouse designated beneficiary may roll over the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an inherited individual retirement account or annuity. (Code 1981, § 47-1-81, enacted by Ga. L. 2005, p. 535, § 2/HB 460; Ga. L. 2009, p. 947, § 6/HB 202; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective May 11, 2009, added subsection (a), designated the existing provisions as subsection (b), and added subsections (c) and (d).

The 2010 amendment, effective July 1, 2010, deleted the comma following "beneficiary" in subparagraph (a)(4)(A) and substituted "Section" for "Sections" near the end of paragraph (c)(2).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions

and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, ben-

efit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a

provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

47-1-82. Maximum benefit limited to that allowed by federal law; nonannuity benefit; reduction; adjustments.

(a) As used in this Code section, the term:

(1) “Annual benefit” means a retirement benefit under the public retirement or pension system which is payable annually in the form of a straight life annuity.

(2) “Applicable mortality table” means the table prescribed by the federal Internal Revenue Code or the secretary of the treasury of the United States which prescribes the mortality table to be applied pursuant to Section 415(b)(2)(E)(v) of the federal Internal Revenue Code; provided, however, that the board of trustees of a public retirement system may adopt a different definition of such term in the retirement system plan document.

(3) “Compensation” means, for purposes of applying the limitations of Section 415 of the federal Internal Revenue Code and for no other purpose, a plan member’s wages as defined in Section 3401(a) of the federal Internal Revenue Code (wages subject to income tax withholding at the source, but without regard to exceptions contained in Section 3401(a) of the federal Internal Revenue Code for wages based on the nature or location of the employment or the services performed). The term shall also include the following:

(A) For limitation years beginning on or after December 31, 1997, for purposes of applying the limitations of Section 415 of the federal Internal Revenue Code, amounts that would otherwise be included in compensation but for an election under Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), and 457(b) of the federal Internal Revenue Code;

(B) For limitation years beginning after December 31, 2000, any elective amounts that are not includable in the plan member’s gross income by reason of Section 132(f) of the federal Internal Revenue Code, relating to qualified transportation plan; and

(C) For limitation years beginning on and after January 1, 2007, compensation paid by the later of 2 1/2 months after the plan member’s severance from employment or the end of the limitation year that includes the date of the plan member’s severance from employment if:

(i) The payment is regular compensation for services during the plan member's regular working hours or compensation for services outside the plan member's regular working hours, including without limitation overtime or shift differential, commissions, bonuses, or other similar payments, and, absent a severance from employment, the payment would have been paid to the plan member while he or she continued in employment with the employer; or

(ii) The payment is for unused accrued bona fide sick leave, vacation leave, or the leave that the member would have been able to use if employment had continued.

"Compensation" also includes back pay, within the meaning of Treasury Regulation Section 1.415 (c)-2(g)(8), for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

(4) "Dollar limitation" means the maximum permissible amount as such term is defined in paragraph (6) of this subsection.

(5) "Limitation year" means the calendar year; provided, however, that the board of trustees of a public retirement system may adopt a different definition of such term in the retirement system plan document.

(6) "Maximum permissible amount" means:

(A) For limitation years beginning prior to January 1, 1995, 100 percent of the plan member's average compensation for the period of three consecutive years during which the plan member has the highest aggregate compensation from the employer;

(B) For limitation years beginning on and after January 1, 1995, but before January 1, 2001, \$90,000; and

(C) For limitation years beginning on and after January 1, 2002, \$160,000.00, as adjusted by the secretary of the treasury of the United States for each calendar year, with the new limitation to apply to limitation years ending within the calendar year of the date of the adjustment.

(7) "Nonannuity benefit form" means a benefit, whether a normal form or an optional form, which is not payable in a straight life annuity for the life of the plan member.

(b) Notwithstanding any other provisions of this title to the contrary, the maximum annual additions and the maximum benefit payable to any active or retired member or beneficiary of a retirement or pension system subject to this title shall be limited to such extent as may be necessary to conform to the requirements of subsections (b) and (c) of Section 415 of the federal Internal Revenue Code for a qualified retirement plan.

(c) If a plan member's benefit is payable in a nonannuity benefit form, whether as the normal form of benefit or as an optional form which the plan member or his or her designated beneficiary elects, the nonannuity benefit form shall be adjusted to an annual benefit as described in subsections (d) and (e) of this Code section. No actuarial adjustment to the nonannuity benefit form shall be required for:

(1) The value of a qualified joint and survivor annuity; or

(2) The value of benefits that are not directly related to retirement benefits, such as a disability benefit, preretirement death benefits, and postretirement medical benefits.

The determination of the annual benefit shall disregard benefits attributable to employee contributions or rollover contributions or the assets transferred from a qualified plan that was not maintained by an employer.

(d) If the annual benefit commences when the plan member has fewer than ten years of participation in the applicable public retirement or pension system or any predecessor public retirement or pension system, the dollar limitation shall be reduced by one-tenth for each year less than ten, but in no event shall be less than one-tenth of the unreduced dollar limitation.

(e)(1) If the payment of benefits under the public retirement or pension system commences before age 62 or after age 65, the dollar limitation shall be adjusted as the actuarial equivalent of the dollar limitation payable at age 62 or age 65, as follows:

(A) If the age at which the benefit is payable is less than 62, the dollar limitation shall be reduced to reflect the lesser of the following calculations:

(i) Reduce the dollar limitation using the interest rate and mortality table or tabular factors, as applicable, which are set forth in the public retirement or pension system for the reduction of benefits for early retirement benefits; or

(ii) Reduce the dollar limitation using 5 percent interest and the applicable mortality table;

(B) For limitation years beginning before January 1, 2002, nothing in this paragraph shall reduce the applicable dollar limitation below \$75,000.00 if the annual benefit begins at or after age 55; and

(C) For limitation years beginning before January 1, 2002, if the annual benefit begins before age 55, nothing in this paragraph shall reduce the dollar limitation below the actuarial equivalent of the \$75,000.00 limitation for age 55.

(2) If a plan member is a qualified member as such term is defined under Section 415(b)(2)(G) of the federal Internal Revenue Code, he or

she may retire before age 62 without a reduction in the dollar limitation if at least 15 years of service is required to receive a full benefit under the public retirement or pension system.

(3) If the age at which the benefit is payable is greater than age 65, the age-adjusted dollar limitation shall be determined by increasing the dollar limitation on an actuarially equivalent basis. The increased age-adjusted dollar limitation shall be the amount computed using 5 percent interest and the applicable mortality table. (Code 1981, § 47-1-82, enacted by Ga. L. 2005, p. 535, § 2/HB 460; Ga. L. 2009, p. 947, § 7/HB 202; Ga. L. 2010, p. 427, § 3/HB 969; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective May 11, 2009, added subsection (a), designated the existing provisions as subsection (b), and added subsections (c) through (e).

The 2010 amendments. — The first 2010 amendment, effective May 24, 2010, substituted the present provisions of paragraph (a)(2) for the former provisions, which read: “‘Applicable mortality table’ means the table prescribed by the secretary of the treasury of the United States in Revenue Ruling 95-6 or any successor thereto which prescribes the mortality table to be applied pursuant to Section 415(b)(2)(E)(v) of the federal Internal Revenue Code. To the extent that a forfeiture does not occur upon death, the mortality decrement may be ignored prior to age 62 and shall be ignored after social security retirement age, as prescribed by federal Internal Revenue Service Notice 83-10, Q&A G-3 and G-4, or any successor thereto.”; in paragraph (a)(5), substituted “calendar” for “plan”, added a semicolon, and added the proviso; in subsection (b), inserted “maximum annual additions and the” near the beginning and inserted “subsections (b) and (c) of” near the end; and, in subsection (c), added “or” at the end of paragraph (c)(1), substituted a period for “; or” at the end of paragraph (c)(2), and deleted former paragraph (c)(3) which read: “The value of postretirement cost-of-living increases provided that the amount payable to the plan member under the nonannuity benefit form in any limitation year shall not be greater than the Section 415(b) of the federal Internal Revenue Code limit applicable at the annuity starting

date as increased in subsequent years pursuant to Section 415(d) of the federal Internal Revenue Code and Section 1.415(d)-1 of the Treasury Regulations.” The second 2010 amendment, effective July 1, 2010, substituted “increases, provided” for “increases provided” in paragraph (c)(3).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.” Accordingly, the amendment to paragraph (c)(3) of this Code section by Ga. L. 2010, p. 1207, § 64 was not given effect.

47-1-83. Maximum permissible amount under Section 415(b) of federal Internal Revenue Code; adjustments.

(a) Notwithstanding anything in this Code section to the contrary, the annual benefit payable to a plan member shall not be deemed to exceed the limits of Section 415 of the federal Internal Revenue Code if the annual benefit payable to the plan member under a public retirement or pension system does not exceed \$10,000.00 for the plan year or any prior plan year and the employer has not at any time maintained a defined contribution plan in which the plan member participated.

(b) Notwithstanding anything contained in this Code section to the contrary, the adjustment prescribed by this Code section for benefits that commence before age 62 and the reduction described in this Code section for fewer than ten years of participation shall not apply to any benefit paid from a public retirement or pension system on account of a plan member's becoming disabled by reason of personal injuries or sickness or to amounts received by a designated beneficiary as a result of the plan member's death. This subsection shall be interpreted in accordance with Section 415(b)(2)(I) of the federal Internal Revenue Code and any regulations promulgated thereunder.

(c) For purposes of applying the limits under Section 415(b) of the federal Internal Revenue Code, a plan member's maximum permissible amount shall be applied taking into consideration cost-of-living increases as required by Section 415(b) of the federal Internal Revenue Code and applicable Treasury Regulations.

(d) In no event shall a plan member's annual benefit payable in any limitation year from a retirement or pension system be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the federal Internal Revenue Code and regulations promulgated thereunder. If the form of benefit without regard to the automatic benefit increases feature is not a straight life annuity, then the preceding sentence is applied by reducing the Section 415(b) of the federal Internal Revenue Code limit applicable at the annuity starting date to an actuarially equivalent amount, to be determined by using the assumption specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii) that takes into account the death benefit under the form of benefit. (Code 1981, § 47-1-83, enacted by Ga. L. 2009, p. 947, § 8/HB 202.)

Effective date. — This Code section became effective May 11, 2009.

47-1-84. Modifications by board of trustees.

(a) Notwithstanding any other provision of this title to the contrary, the board of trustees of a retirement or pension system may modify a request by

a plan member to make a contribution to the public retirement or pension system if the amount of the contribution would exceed the limits provided under Section 415 of the federal Internal Revenue Code by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the board of trustees may establish a periodic payment plan for the plan member to avoid a contribution in excess of the limits under Section 415(c) or 415(n) of the federal Internal Revenue Code; and

(2) If the payment plan pursuant to paragraph (1) of this subsection will not avoid a contribution in excess of the limits, the board of trustees may refuse the plan member's contribution.

(b) For any plan member who first became a plan member in the public retirement or pension system before January 1, 1998, the limitation of Section 415(c)(1) of the federal Internal Revenue Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under state law on August 5, 1997. (Code 1981, § 47-1-84, enacted by Ga. L. 2009, p. 947, § 8/HB 202.)

Effective date. — This Code section became effective May 11, 2009.

47-1-85. Assets of public retirement or pension system to be held in trust.

(a) The assets of a public retirement or pension system shall be held in trust, and it shall not be possible at the time prior to satisfaction of all liabilities to plan members and their beneficiaries under the public retirement or pension system for any part of said assets to be used for, or diverted to, purposes other than for the exclusive benefit of plan members and their designated beneficiaries and for paying reasonable expenses of the public retirement or pension system and trust fund.

(b) The board of trustees of a public retirement or pension system shall not engage in a transaction prohibited by Section 503(b) of the federal Internal Revenue Code. (Code 1981, § 47-1-85, enacted by Ga. L. 2009, p. 947, § 8/HB 202.)

Effective date. — This Code section became effective May 11, 2009.

47-1-86. Adopted plan document or rules and regulations govern.

Any other provision of this chapter to the contrary notwithstanding, to the extent that the Board of Trustees of the Georgia Municipal Employees Benefit System created by Chapter 5 of this title has adopted a plan document or rules and regulations that are in compliance with Sections

401(a) and 414(d) and other applicable sections of the federal Internal Revenue Code, such plan document or rules and regulations shall govern such system notwithstanding any conflicting provision in this chapter; provided, however, that the provisions of Code Section 47-1-13 shall in any event apply to said system. (Code 1981, § 47-1-86, enacted by Ga. L. 2009, p. 947, § 8/HB 202.)

Effective date. — This Code section became effective May 11, 2009.

CHAPTER 2

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Miscellaneous Provisions

- 47-2-330. Application of other state funded pension or retirement programs to members or beneficiaries, their surviving spouses, or dependents.
- 47-2-331. Reporting of employee contributions for federal and state income tax purposes.
- 47-2-332. Exemption of rights and benefits from taxes, legal process, and assignment of retirement

Sec.

- system property as public property; exemptions for retirement system property.
- 47-2-333. Attempts to defraud the retirement system by false statements or falsified records; adjustments of erroneous payments.
- 47-2-334. Service retirement allowance; calculation; employee membership contributions; employer contributions; optional membership; conditions; construction of provision.

Article 10

Georgia State Employees' Pension and Savings Plan

- 47-2-350. Short title.
- 47-2-351. "Member" defined; membership optional; calculation.
- 47-2-352. Employee and employer contributions.
- 47-2-353. Service retirement allowance.
- 47-2-354. Conditions; rights, privileges, obligations, and duties.
- 47-2-355. Disability retirement; periodic medical examination and review.
- 47-2-356. Death allowances and benefits.
- 47-2-357. Withdrawal; employer contributions; vesting; date of election.
- 47-2-358. Impact on members of Employees' Retirement System of Georgia on December 31, 2008.
- 47-2-359. Conflicting provisions.
- 47-2-360. Administration.

Cross references. — Authorization for establishment of retirement system for employees, Ga. Const. 1983, Art. III, Sec. X, Para. I. Reimbursement of Department of Law by Employees' Retirement System of Georgia, Teachers Retirement System of Georgia, Public School Employees Retirement System and Trial Judges and Solicitors Retirement Fund for legal services, § 45-15-37. Health insurance plan for state employees, § 45-18-1 et seq. Deferred com-

pensation plans for employees of state, § 45-18-30 et seq. Provision that exclusion from classified service shall not exclude any employee, officer, or official from membership in Employees' Retirement System of Georgia, § 45-20-6(c).

Administrative rules and regulations. — Administrative Rules, Official Compilation of the Rules and Regulations of the State of Georgia, Employees' Retirement System of Georgia, Chapter 513-1-1.

JUDICIAL DECISIONS

Cited in *Scott v. Employees' Retirement Sys.*, 113 Ga. App. 295, 147 S.E.2d 821 (1966).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

GENERAL CONSIDERATION

OPINIONS UNDER PRIOR LAW

1. OPINIONS UNDER GA. L. 1957, P. 206, AS AMENDED, AND GA. L. 1962, P. 602
2. OPINIONS UNDER GA. L. 1956, P. 75, § 3, AND GA. L. 1970, P. 716, § 1

General Consideration

Retirement rights vested by one statute cannot be taken away by a subsequent statute. 1972 Op. Att'y Gen. No. 72-122.

Once a right has been extended to the membership of a public retirement system by statute, it becomes part of the employment contract of the affected employees and cannot thereafter be constitutionally deleted or impaired. 1977 Op. Att'y Gen. No. U77-20.

Forfeiture of benefits by employees convicted of crime. — General Assembly has the authority to enact a statute which proposes the forfeiture of earned retirement benefits of future public employees due to the conviction of a crime; however, an amendment to the Georgia Constitution proposing such a forfeiture by employees who are currently by law vested with rights under the public retirement system would, in all probability, be unconstitutional under the federal Impairment Clause contained in U.S. Const., Art. I, Sec. 10. 1985 Op. Att'y Gen. No. U85-3.

Election of regular retiree does not suspend benefits. — Retirement benefits are not suspended if regular retiree is elected to full-time, paid county office. 1972 Op. Att'y Gen. No. 72-56.

Chapter is intended to apply prospectively. 1975 Op. Att'y Gen. No. 75-82.

Credit for military service before 1953. — In order to obtain credit for military service rendered prior to July 1, 1953, a state employee must have been a member of the retirement system on January 1, 1954. 1962 Op. Att'y Gen. p. 366.

Credit for service as city court judge. — Individual is entitled to credit in retirement

system for service as a city court judge, but not for service as a municipal court judge or an ex-officio city court judge. 1954-56 Op. Att'y Gen. p. 598.

"Contingency clerks" not in retirement system. — Membership in the retirement system was envisioned for full-time employees of the State of Georgia who occupy positions potentially and probably requiring continued, nonintermittent employment of more than 35 (now 30) hours per week during at least nine months of a year; therefore, personnel within the Department of Labor who occupy the position of "contingency clerk" should not be considered as members of the system and should not be required to contribute to the retirement system, nor should employer contributions be made on their behalves. 1977 Op. Att'y Gen. No. 77-59.

Law does not preclude dual employment if one works full time with one employer and attempts simultaneously to serve full time in another capacity for another master. 1962 Op. Att'y Gen. p. 368.

Member not prohibited from receiving benefits from two retirement systems. — Member of the Employees' Retirement System who, as a statutory condition of continued employment, also becomes a bona fide member of the Public School Employees Retirement System, is not prohibited by law from receiving retirement benefits from both systems for valid, separable periods of creditable service, assuming that all other requisite conditions in these provisions are met. 1979 Op. Att'y Gen. No. 79-15.

Employees of multi-state agency not in state system. — Employees of the Southern Interstate Nuclear Board (now Southern States Energy Board), being employees of a

multi-state agency and not of the State of Georgia, are not entitled to membership in the Employees' Retirement System of Georgia. 1962 Op. Att'y Gen. p. 364, but see 1967 Op. Att'y Gen. No. 67-22.

Employees in state positions funded under federal employment provisions cannot participate in retirement systems. — Law did not contain sufficient authority to implement the conditions and requirements of the regulations promulgated by the United States Secretary of Labor which prescribed the conditions under which employees of the state and local governments and private nonprofit agencies in Georgia whose positions were funded under the former federal Comprehensive Employment and Training Act of 1973 (CETA), 29 U.S.C. § 801 et seq., participated in retirement systems. 1977 Op. Att'y Gen. No. 77-66.

Opinions Under Prior Law

1. Opinions Under Ga. L. 1957, p. 206, as amended, and Ga. L. 1962, p. 602

Editor's notes. — In light of the similarity of the issues covered in the provisions, opinions under Ga. L. 1957, p. 206, as amended, and Ga. L. 1962, p. 602, which dealt with emeritus positions, are included in the annotations for this chapter.

Chapter inapplicable to district attorney emeritus system. — The 1975 amendment to Sec. 4 of the DA's Emeritus Act repealed the 1962 Forfeiture Act as to any applicability it may have had under the district attorney's emeritus system. 1976 Op. Att'y Gen. No. 76-86 (rendered under Ga. L. 1962, p. 602).

Need not resign emeritus eligibility before seeking Supreme Court seat. — To whatever extent the forfeiture and resignation provisions enacted in 1962 may be applicable to judges of the superior courts generally, it cannot be applied constitutionally to a judge to restrict or impair the retirement rights and benefits the judge received under the statute in effect when the judge took office; the judge is not required to resign the judge's emeritus eligibility prior to seeking a seat on the Supreme Court of Georgia. 1974

Op. Att'y Gen. No. U74-51 (rendered under Ga. L. 1962, p. 602).

District attorney should defer emeritus status before seeking judgeship. — District attorney may seek election to the office of superior court judge while serving as a district attorney; however, considering the possible consequences of the state emeritus office forfeiture provisions, it is deemed advisable for any state official subject to these provisions to defer the attainment of emeritus status at least until the conclusion of any attempt to seek another public office. 1974 Op. Att'y Gen. No. U74-48 (rendered under Ga. L. 1962, p. 602).

Superior court emeritus benefits suspended upon qualification for Court of Appeals. — Judge's qualifying as a candidate to succeed oneself as Judge of the Court of Appeals of Georgia would not cause a forfeiture of the judge's status, rights, and benefits as a judge of the superior courts emeritus; however, qualification for or election to the position of Judge of the Court of Appeals would result in a suspension of the judge's status, rights, and benefits as a judge of the superior courts emeritus during the period of time that the judge would hold the office of Judge of the Court of Appeals. 1968 Op. Att'y Gen. No. 68-199 (rendered under Ga. L. 1962, p. 602).

Public service commissioner emeritus assisting commission not entitled to additional compensation. — Public service commissioner emeritus is not entitled to compensation greater than that provided by statute, and the commission may request a public service commissioner emeritus to consult with, advise, and assist the commission without additional compensation. 1976 Op. Att'y Gen. No. 76-96 (rendered under Ga. L. 1962, p. 602).

2. Opinions Under Ga. L. 1956, p. 75, § 3, and Ga. L. 1970, p. 716, § 1

Only state employees covered by social security are those designated by Ga. L. 1956, p. 75, § 1 et seq. (see O.C.G.A. § 47-18-1 et seq.). 1971 Op. Att'y Gen. No. U71-141.

RESEARCH REFERENCES

ALR. — Statute or ordinance providing pension for public officers or employees as available to one who had left service before the passage of the statute, 142 ALR 938.

Effect of reentry into public employment on retirement pension previously granted to public officer or employee, 162 ALR 1469.

Reasonableness of classification, as regards beneficiaries, by statute providing for retirement fund or pension for public officers or employees, 163 ALR 870.

Gift to or for employees' pension fund as valid charitable gift or trust, 28 ALR2d 428.

Vested right of pensioner to pension, 52 ALR2d 437.

Misconduct as affecting right to pension or retention of position in retirement system, 76 ALR2d 566.

Employer's liability, under state law, for fraud or misrepresentation inducing employee to take early retirement, 14 ALR5th 537.

ARTICLE 1

GENERAL PROVISIONS

47-2-1. Definitions.

As used in this chapter, the term:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the earnable compensation of a member or paid by the member to establish or reestablish credit for service, which amounts are credited to the member's individual account in the annuity savings fund, together with regular interest thereon. Beginning July 1, 1980, "accumulated contributions" also includes the amount of employee contributions paid by the employer on behalf of the employee and credited to the employee's individual account in the annuity savings fund, together with regular interest thereon, excluding employee contributions paid by the employer or the employee for group term life insurance.

(2) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(3) "Annuity" means annual payments for life derived from the accumulated contributions of a member.

(4) "Annuity reserve" means the present value of all payments to be made on account of an annuity, or benefit in lieu of an annuity, computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(5) "Annuity savings fund" means the fund set forth under Code Section 47-2-51.

(6) "Average final compensation" means the average annual earnable compensation of any employee during his last five years of creditable service or, if he has had less than five years of creditable service, his

average annual earnable compensation during his total creditable service.

(7) "Beneficiary" means any person in receipt of a pension, an annuity, a retirement allowance, or other benefit under this chapter.

(8) "Board of trustees" means the board of trustees provided for in Code Section 47-2-21 to administer the retirement system.

(9) Reserved.

(10) Reserved.

(11) "Court of record" means state courts, city courts, superior courts, the Georgia Court of Appeals, and the Supreme Court of Georgia handling within their jurisdiction general state law exclusively. This definition shall have no effect on creditable service determined or prior service certificates issued by the board of trustees before February 13, 1956.

(12) "Credit" means creditable service, as defined in this Code section.

(13) "Creditable service" means prior service plus membership service and any other service recognized as creditable service under this chapter.

(14) "Division A" means the division within the retirement system of members who are part of the Employees' Social Security Coverage Group, as set forth in Code Section 47-2-71.

(15) "Earnable compensation" means the full rate of regular compensation payable to a member employee for his or her full normal working time, excluding any supplements from local funds. In cases where compensation includes maintenance, the board of trustees shall fix the value of that part of the compensation not paid in cash. Such term shall include contributions made to a qualified transportation plan, within the meaning of Section 132(f) of the federal Internal Revenue Code, and before tax or salary deferral contributions made under Section 125, 401(k), 402(g)(3), 457, or 414(h) of the federal Internal Revenue Code to this retirement system or to any other retirement plan maintained by an employer.

(16) "Employee" means:

(A) Any regularly classified worker, elected or appointed officer, or employee of a state agency or any employee of a county, city-county, or city board, which agency or board is under the State Personnel Administration, including a merit system for employees of the Department of Public Safety;

(B) Any employee or officer of any other department, bureau, board, institution, or commission of the state:

- (i) Which department, bureau, board, or commission operates under a merit system of personnel administration;
- (ii) Which department operates under a tenure system as established by law; or
- (iii) Which department, bureau, board, or commission becomes eligible for inclusion in the retirement system by Act of the General Assembly

who receives payment for performance of personal services from the state or any department, bureau, institution, board, or commission of the state or from a county, city-county, or city board and who is employed in a position normally requiring actual performance of duty during not less than nine months of the year. "Employee" shall not include members of the Teachers Retirement System of Georgia, members of the Public School Employees Retirement System, any person on the payroll of a third party with whom an employer has contracted for the provision of such person's services, or any person classified by an employer as other than a common law employee for federal tax purposes, even if a court, tribunal, or administrative agency determines that such person is a common law employee and not an independent contractor for federal tax purposes;

(C) Any other provisions of law to the contrary notwithstanding, any and all civilians who are employed in or with the Army National Guard of Georgia and the Air National Guard of Georgia shall, upon establishment of a merit system for such civilian employees and upon the approval of the adjutant general, be entitled to the retirement allowances, benefits, and privileges provided by this chapter, notwithstanding that such employees may be paid by federal funds. No credit shall accrue to such civilian employees for any service rendered prior to the effective date of coverage under the retirement system. The adjutant general is authorized to make such arrangements and agreements as may be necessary or proper in order to effect deductions from the salaries or wages of such civilian employees as may be necessary or proper in the administration of the retirement system as to such civilian employees. It is the intent of the General Assembly that such persons be included in this definition only if federal funds are available for payment of employer contributions for such employees and other expenses of participation.

(16.1) "Employee" may include new certified professional personnel employed on and after July 1, 1983, for the first time by the State Board of Education or by the State Department of Education only if such personnel elect membership in the retirement system pursuant to subsection (h) of Code Section 47-3-60. As used in this paragraph, the term "certified professional personnel" shall have the meaning provided for in paragraph (8.1) of Code Section 47-3-1.

(16.2) "Employee" shall not include certified professional personnel who are in the unclassified service of the State Personnel Administration and who are employed by the State Board of Education or by the State Department of Education and who elect to become members of the Teachers Retirement System of Georgia pursuant to the authority of subsection (i) of Code Section 47-3-60. As used in this paragraph, the term "certified professional personnel" shall have the meaning provided for in paragraph (8.1) of Code Section 47-3-1.

(16.3) "Employee" may include persons employed on and after July 1, 1987, for the first time by the Technical College System of Georgia or by postsecondary vocational-technical schools governed by the Technical College System of Georgia only if such personnel elect membership in the retirement system pursuant to subsection (j) of Code Section 47-3-60.

(16.4) "Employee" shall not include persons who are employed by the Technical College System of Georgia or by a postsecondary vocational-technical school governed by the Technical College System of Georgia and who elect to become members of the Teachers Retirement System of Georgia pursuant to the authority of subsection (j) of Code Section 47-3-60.

(16.5) "Employee" shall not include personnel employed by the State Board of Education or by the State Department of Education who are authorized to elect and elect to become or remain members of the Teachers Retirement System of Georgia pursuant to applicable provisions of Chapter 3 of this title.

(16.6) "Employee" shall not include an individual classified by an employer as an independent contractor or a leased employee within the meaning of Section 414(n) of the federal Internal Revenue Code, even if such individual is later reclassified by the Internal Revenue Service as a common law employee.

(17) "Employer" means:

(A) The state or any department, bureau, institution, board, or commission of the state or any county, city-county, or city board, the employees of which are under the State Personnel Administration, including a merit system for employees of the Department of Public Safety, and all state departments under a tenure system as established by law, provided that such county, city-county, or city board may notify the board of trustees that it will not participate in the benefits of the retirement system, such notice to be given in writing on or before the commencement date or before persons are employed by it. Any employee of a county, city-county, or city board having an existing local retirement system may elect to continue to participate in such existing local system but shall not participate in two systems, and his or her election shall be final on the commencement date under this chapter.

Any county, city-county, or city employee who elects to become a member of this retirement system and who was a member of an existing local retirement system shall transfer to the board of trustees any equity he or she has in the local system.

(B) Any other provisions of law to the contrary notwithstanding, the adjutant general is authorized, though not directed, to establish a merit system and to perform all of the duties and obligations of an “employer” for all civilians employed in or with the Army National Guard of Georgia and the Air National Guard of Georgia, even though such employees may be paid with federal funds. The adjutant general is further authorized to make and enter into such agreements and take such actions as are necessary to provide for all contributions and payments specified in this chapter, from funds made available by the federal government, and otherwise to comply with this chapter so as to make this chapter applicable to such civilian employees.

(C) “Employer” shall include any new state agency described under Code Section 47-2-70.1 and any other entity authorized by law to report any of its employees as members of this system.

(18) “Expense fund” means the fund set forth under Code Section 47-2-60.

(19) “Group term life insurance” means the survivors benefits established under Code Section 47-2-128.

(20) “Involuntary separation from employment without prejudice” means separation or release from service other than by the willing choice of a member, provided that such member has not been convicted in a court of competent jurisdiction of any crime involving moral turpitude or malfeasance in office or has not been forced to make restitution for any funds or property wrongfully taken by the member. Involuntary separation shall not include the defeat in an election of an elected official who becomes a member of this retirement system for the first time on or after July 1, 1971.

(21) “Involuntary separation from employment with prejudice” means separation or release from service other than by the willing choice of a member who has been convicted in a court of competent jurisdiction of a crime involving moral turpitude or malfeasance in office or who has been forced to make restitution for any funds or property wrongfully taken by the member.

(22) “Medical board” means the board of physicians established under Code Section 47-2-24 for the purpose of arranging for and passing upon medical examinations required under this chapter.

(23) “Member” means any employee included in the membership of this retirement system. On and after July 1, 1967, no employee shall

become a member unless his position with an employer, as defined in paragraph (17) of this Code section, is his primary occupation and such position requires that the employee spend at least the number of hours specified in regulations adopted by the board of trustees in the actual performance of his duties, provided that in no case shall the number of hours be less than 30 hours per week during at least nine months of a year.

(24) "Membership service" means service which is rendered by an employee while he is a member of the retirement system and for which credit is allowable under this chapter.

(25) "Option one," "option two," "option three," and "option four" mean the optional forms in which a member may elect to receive his retirement allowance, which options are set forth in Code Section 47-2-121.

(26) "Pension" means periodic payments for life derived from contributions of the state.

(27) "Pension accumulation fund" means the fund set forth in Code Section 47-2-55.

(28) "Pension reserve" means the present value of all payments to be made on account of a pension, or benefit in lieu of a pension, computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(28.1) "Plan year" means the 12 month period beginning on July 1 of each year.

(29) "Prior service" means service rendered prior to January 1, 1954, for which credit is allowable under this chapter.

(30) "Prior service certificate" means the certificate issued to a member under this chapter as proof of his prior service.

(31) "Regular interest" means interest at such a rate as shall be determined by the board of trustees in accordance with Code Section 47-2-26, which interest shall be compounded annually.

(32) "Retirement" means withdrawal from service with a retirement allowance granted under this chapter.

(33) "Retirement allowance" means the sum of the annuity and the pension, or any optional benefit payable in lieu thereof. All retirement allowances shall be payable in equal monthly installments, except that the board of trustees may adopt regulations providing for the payment of a lump sum, not to exceed the equivalent actuarial value of the retirement allowance, in lieu of a retirement allowance of less than \$10.00 per month or in lieu of part of an annuity.

(34) “Retirement system” means the Employees’ Retirement System of Georgia.

(35) “Service” means service rendered as an employee and paid for by an employer.

(36) “Service credit” means creditable service, as defined in this Code section.

(37) “Within one year after discharge from the armed forces” means within one year after the termination of the member’s active service in the military or naval forces of the United States and shall not include any military reserve or naval reserve service. (Ga. L. 1949, p. 138, § 1; Ga. L. 1950, p. 416, § 1; Ga. L. 1951, p. 394, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 349, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 160, § 1; Ga. L. 1956, p. 54, § 1; Ga. L. 1961, p. 101, §§ 1, 2; Ga. L. 1961, p. 143, § 1; Ga. L. 1967, p. 751, § 1; Ga. L. 1968, p. 195, § 1; Ga. L. 1971, p. 96, § 1; Ga. L. 1980, p. 925, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 1859, § 1; Ga. L. 1984, p. 1296, § 1; Ga. L. 1985, p. 209, § 1; Ga. L. 1986, p. 1543, § 1; Ga. L. 1987, p. 575, §§ 5, 6; Ga. L. 1988, p. 1351, § 1; Ga. L. 1988, p. 1742, § 1; Ga. L. 1989, p. 52, § 1; Ga. L. 2005, p. 535, §§ 3, 4/HB 460; Ga. L. 2006, p. 93, § 1/SB 466; Ga. L. 2008, p. 562, § 1/SB 434; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2009, p. 947, §§ 9-12/HB 202; Ga. L. 2010, p. 1207, §§ 3, 64/SB 436.)

The 2008 amendment, effective July 1, 2008, substituted “Technical College System of Georgia” for “Department of Technical and Adult Education” twice in paragraphs (16.3) and (16.4).

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, in subparagraphs (16)(A) and (17)(A), substituted “State Personnel Administration” for “state merit system of personnel administration” and, in paragraph (16.2), substituted “State Personnel Administration” for “State Merit System of Personnel Administration”. The second 2009 amendment, effective May 11, 2009, in paragraph (1), substituted “earnable compensation of a member or paid by the member to establish or reestablish credit for service, which amounts are credited to the member’s” for “compensation of a member and credited to his” in the first sentence and added “, excluding employee contributions paid by the employer or the employee for group term life insurance” at the end of the second sentence; in paragraph (15), inserted “or her” in the middle of the first sentence and added the last sentence; in paragraph (17), in subparagraph (17)(A), inserted “or her” in the second sentence and inserted “or she” in

the third sentence, and added subparagraph (17)(C); and added paragraphs (16.6) and (28.1).

The 2010 amendment, effective July 1, 2010, substituted “Reserved.” for the former provisions of paragraph (9), which read: “‘Commencement date affecting employers operating under a merit system of personnel administration at the time of the passage of this chapter’ means January 1, 1950. Anything in this chapter to the contrary notwithstanding, any employee of an employer which is not operating under the retirement system who, without a break in service, becomes an employee of an employer which is operating under the retirement system, within two years of the commencement date affecting such employer, shall have a commencement date as of the date employment with the latter department became effective; and in such cases all other dates found in this chapter shall be set in the same relation to his commencement date as they would otherwise be set in relation to the commencement date affecting such employer.”; substituted “Reserved.” for the former provisions of paragraph (10), which read: “‘Commencement date affecting employers that after February 3, 1949, operate under a

merit system of personnel administration or those employers for which funds are not available on that date under Code Section 47-2-57' means: if the employees of any employer shall hereafter become eligible for inclusion in the Employees' Retirement System of Georgia, the commencement date set for such employer by the board of trustees shall be not less than six months or more than 12 months from the date such employer becomes eligible for membership; and all other dates mentioned in this chapter shall be set in the same relation to this commencement date as they would otherwise be set in relation to the commencement date in the original chapter, provided that in the application of dates to subsection (a) of Code Section 47-2-96, no date shall be later than July 1, 1953. Anything in this chapter to the contrary notwithstanding, any employee of an employer which is not operating under the retirement system who, without a break in service, becomes an employee of an employer which is operating under the retirement system, within two years of the commencement date affecting such employer, shall have a commencement date as of the date employment with the latter employer became effective; and in such cases all other dates found in this chapter shall be set in the same relation to his commencement date as they would otherwise be set in relation to the commencement date affecting such employer."; in paragraph (14), substituted "means the division" for "and 'Division B' mean the divisions" at the beginning and deleted ", and those who are not, respectively" following "Section 47-2-71" at the end; substituted "Section" for "Sections" near the end of paragraph (15); and, substituted "under the State Personnel Administration" for "under a State Personnel Administration" in subparagraphs (16)(A) and (17)(A).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, the term "Employee" in paragraph (16.1) was placed in quotations.

Editor's notes. — Section 5 of the 1984 Act provided that this Act would become

effective on January 1, 1985, only if a proposed amendment (see Ga. L. 1984, p. 1726) to the Constitution (Ga. Const. 1983, Art. III, Sec. X, Para. VI) authorizing the General Assembly to revise provisions of public retirement or pension systems relating to involuntary separation from employment were ratified at the 1984 general election. Such approval was given at that election.

Ga. L. 1984, p. 1296, § 6, not codified by the General Assembly, provided: "Pursuant to the authority of the proposed constitutional amendment described in Section 5 of this Act and being contingent for its effectiveness on January 1, 1985, upon the ratification of such proposed constitutional amendment, this Act is exempt from the provisions of Chapter 20 of Title 47 of the Official Code of Georgia Annotated known as the 'Public Retirement Systems Standards Law.'"

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

JUDICIAL DECISIONS

Authority of board of trustees to reduce pension benefits based on age and length of

service at retirement. — Neither O.C.G.A. § 47-2-120(a) nor O.C.G.A. § 47-2-110(a)

provides a formula for the calculation of service retirement benefits; the authority to do so rests with the Board of Trustees of the Employees Retirement System of the State of Georgia (ERS) under the general grant of authority in O.C.G.A. § 47-2-21 to effectuate the provisions of the ERS Act, O.C.G.A. § 47-2-1 et seq., including the specific grants of authority found in O.C.G.A. §§ 47-2-26(a) and 47-2-28(a) and (b). *Alverson v. Employees' Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

When employee entitled to separation benefits. — When an employee has been separated from employment without prejudice, the relevant issue for determining whether the employee is entitled to separation benefits is whether the termination was voluntary or involuntary. *Boyd v. Employees' Retirement Sys.*, 200 Ga. App. 345, 408 S.E.2d 157 (1991).

Facts did not support involuntary separation. — Employee's objectionable conduct, consisting of the illegal acceptance of gratuities and the purposeful failure to comply

with state laws and regulations, constituted the kind of activity that any employee would know or should have known would result in the employee's dismissal, and thus did not constitute involuntary separation within the meaning of the statute. *Boyd v. Employees' Retirement Sys.*, 200 Ga. App. 345, 408 S.E.2d 157 (1991).

Requirements of Public Service Commission. — Although the statute does not require the Public Service Commission (PSC) to reappoint plaintiff as a confidential secretary, the PSC must offer the plaintiff a job with reasonably compatible duties and at the same pay as the plaintiff's former secretarial job. *Alford v. Public Serv. Comm'n*, 262 Ga. 386, 418 S.E.2d 13 (1992).

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968); *Employees' Retirement Sys. v. Almgren*, 235 Ga. 368, 219 S.E.2d 749 (1975); *Allison v. Domain*, 158 Ga. App. 542, 281 S.E.2d 299 (1981); *Hadley v. Board of Trustees*, 171 Ga. App. 614, 320 S.E.2d 620 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Commencement date for purchasing creditable service to January 1, 1954. — In enacting Ga. L. 1976, p. 456, § 1, the General Assembly intended to move the commencement date for the purchase of creditable membership service by tax officials and employees from April 1, 1959 back to January 1, 1954, to allow retirement system members who were county tax commissioners, collectors, receivers, or employees of such officers prior to April 1, 1959, to purchase retirement credit for all time actually served as such between January 1, 1954 and April 1, 1959. 1976 Op. Att'y Gen. No. 76-129.

All state officials and employees included within system. — All officials and employees of any state department or agency are included within the Employees' Retirement System of Georgia, whether such officials and employees are in the classified or unclassified service; the Governor's office would be includable as a department or agency within the meaning of Ga. L. 1949, p. 138 et seq. 1973 Op. Att'y Gen. No. 73-39.

Personnel hired by state under federally funded contracts. — Personnel hired by this state to perform services required under

federally funded contracts with the Department of Defense of the State of Georgia are state employees and are eligible for coverage under state employees' retirement. 1969 Op. Att'y Gen. No. 69-6.

Georgia Fire Academy employees included. — Employees of the Georgia Fire Academy are legally entitled to membership in the Employees' Retirement System of Georgia. 1983 Op. Att'y Gen. No. 83-24.

Historic Chattahoochee Commission is not a statutorily covered agency within the meaning of Ga. L. 1949, p. 138 et seq. 1979 Op. Att'y Gen. No. 79-14.

Failure of retirement system member to be reelected to a covered position constitutes involuntary separation from employment for purposes of the retirement system laws. 1962 Op. Att'y Gen. p. 364 (rendered under Ga. L. 1949, p. 138, § 1, prior to amendment by Ga. L. 1968, p. 195).

State official's release from fixed term is not willing. — State official's separation or release from service was not willingly by the official's choice simply and solely because of the official's having accepted an office with the knowledge that the office has a fixed

term and knowing that the state board having the appointive or elective power to fill the office might decide at the end of the official's term to appoint or to elect some other person. 1971 Op. Att'y Gen. No. 71-6.

Clerks of superior courts and staffs not included. — Clerks of superior courts and staffs may not come under Employees' Retirement System of Georgia. 1969 Op. Att'y Gen. No. 69-168.

"Contingency clerks" within Department of Labor not included. — Membership in the retirement system was envisioned for full-time employees of the State of Georgia who occupy positions potentially and probably requiring continued, nonintermittent employment of more than 35 (now 30) hours per week during at least nine months of a year; therefore, personnel within the Department of Labor who occupy the position of "contingency clerk" should not be considered as members of the system, and should not be required to contribute to the retirement system, nor should employer contributions be made on their behalves. 1977 Op. Att'y Gen. No. 77-59.

General assembly year for year service creditable. — Service allowable year for year

to former members of the General Assembly is creditable as "membership service" and, hence, is includable for determinations of the eligibility for involuntary separation retirement benefits. 1971 Op. Att'y Gen. No. 71-5.

Revenue Department makes contributions for county tax office employees. — Revenue Department is authorized and directed to make employer contributions in behalf of officials and employees of county tax offices which comply with all the conditions precedent set forth in Ga. L. 1969, p. 1013, § 1 (see O.C.G.A. § 47-2-292) within the applicable time limitations expressly provided for therein. 1969 Op. Att'y Gen. No. 69-349.

No "regular interest" accrues while member not in service. — Since contributions and interest are all that accrue to an account of a member of the retirement system, and since Ga. L. 1959, p. 107, § 2 (see O.C.G.A. § 47-2-70(c)) expressly states that contributions shall not be made while a member is not in service, it necessarily follows that the word "benefit" must be construed to mean "regular interest." 1971 Op. Att'y Gen. No. 71-26.

RESEARCH REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d, Pensions and Retirement Funds, § 30.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 311 et seq. 81A C.J.S., States, § 211 et seq.

ALR. — Re-employment or reinstatement of public officer or employee as restoration of original status as regards incidental rights privileges, 89 ALR 684.

Constitutionality, construction, and application of statute or ordinance providing for

reduction of pension or retirement benefit of public officer or employee because of independent income, 7 ALR2d 692.

Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes, 10 ALR2d 369.

What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon, 91 ALR5th 225.

47-2-2. Involuntary separation from employment; grounds and procedures for discharge of employees.

(a) The provisions of this Code section are supplemental to, and not in lieu of, the provisions of paragraphs (20) and (21) of Code Section 47-2-1 defining "involuntary separation from employment without prejudice" and "involuntary separation from employment with prejudice."

(b) The word "employee" as defined in paragraph (2) of subsection (c) of this Code section shall include any such employee in the classified or unclassified service of the State Personnel Administration provided for by

Chapter 20 of Title 45. The provisions of that law or any rules or regulations promulgated pursuant thereto relative to the dismissal of employees from employment shall not be applicable to the discharge of an employee from employment pursuant to the provisions of this Code section. Any such employee who is otherwise subject to that law and rules or regulations promulgated pursuant thereto shall continue to be subject thereto for the purpose of any adverse personnel action other than discharge from employment or suspension pursuant to this Code section, but for the purposes of such discharge from employment or suspension, the provisions of this Code section shall be exclusive.

(c) As used in this Code section, the term:

(1) “Duties” means duties and responsibilities assigned by an employer to an employee which are reasonably related to the lawful objectives and responsibilities of the employer and which are reasonably related to the position of employment held by the employee for which the employee is compensated.

(2) “Employee” means an employee, other than an elected public official, a public official selected by a vote of a board to serve at the pleasure of the board, or a public official appointed pursuant to law for a specific term of office, as defined in paragraph (16) of Code Section 47-2-1 who was a member of the retirement system prior to April 1, 1972, and who, if involuntarily separated from employment without prejudice, has sufficient membership service under the retirement system to qualify for a retirement allowance because of such involuntary separation from employment.

(3) “Employer” means any person or group of persons authorized by law or having authority delegated by law to discharge an employee.

(4) “Insubordination” means the refusal by an employee to carry out the employee’s duties when instructed to do so by the employer or by the employee’s supervisor upon the instructions or under the authority of the employer.

(5) “Irresponsible performance of duties” means the performance of any duties by an employee or the use of an employee’s position of employment for any one or more of the following purposes:

(A) To make a financial gain or receive materials or services having financial value, except compensation received as an employee, under circumstances which would lead a reasonable person to believe that the financial gain or the receipt of materials or services was improperly related to the performance of duties by the employee;

(B) To purchase or authorize the purchase of materials or services from public funds when the employee knows or reasonably could be expected to know that the amount paid for such materials or services

unreasonably exceeds the amount for which substantially equivalent materials or services could be purchased without excessive delay or inconvenience;

(C) To use publicly owned real or personal property or publicly supplied services for personal use when the employee knows or reasonably could be expected to know that such personal use of public property or services is unauthorized or improper; or

(D) To expend or authorize the expenditure of public funds in a manner which would lead a reasonable person to believe the employee shows a reckless disregard for the obligation to taxpayers to expend public funds in a prudent and efficient manner.

(6) "Malingering" means frequent absences from work or the failure to perform duties during working hours because of claims of illness which are unsubstantiated as determined pursuant to subsection (e) of this Code section.

(7) "Neglect of duty" means the repeated failure by an employee to carry out the employee's duties, either because of excessive unexcused absences from work or a failure to perform or the unsatisfactory performance of duties while at work or a combination thereof.

(8) "Proof of illness" means a written opinion by one or more physicians designated by the medical board provided for by Code Section 47-2-24 stating that an employee's absences from work or unsatisfactory performance of duties are reasonably related to an illness suffered by the employee and describing the nature of such illness.

(9) "Unsatisfactory performance of duties in a willful manner" means the unsatisfactory performance of duties by an employee when the past satisfactory performance of duties by the employee indicates the employee's unsatisfactory performance is willful as determined pursuant to subsection (f) of this Code section.

(d) An employee may be discharged from employment pursuant to the requirements of this Code section for insubordination, irresponsible performance of duties, malingering, neglect of duty, or unsatisfactory performance of duties in a willful manner or for any combination of such reasons. Any employee so discharged from employment shall not be entitled to and shall not receive a retirement benefit based on involuntary separation from employment without prejudice pursuant to Code Section 47-2-123.

(e) An employer shall have a reasonable basis for believing an employee is malingering when:

(1) The employee has a pattern of absences from work because of illness or unsatisfactory performance of duties because of illness or a pattern of absences from work and unsatisfactory performance of duties because of illness;

(2) The employer has requested the employee, in writing, to provide proof of illness and the employee has been given a reasonable opportunity, which shall not be less than 30 days after the date of the request made by the employer, to respond to the employer's request; and

(3) The employee has provided no or unsatisfactory proof of illness to the employer in response to the request made pursuant to paragraph (2) of this subsection.

(f) An employer shall have a reasonable basis for believing an employee is engaging in unsatisfactory performance of duties in a willful manner when:

(1) The past work history of the employee indicates the employee is capable of satisfactory performance of duties;

(2) The unsatisfactory performance of duties became increasingly apparent after the employee qualified for a retirement benefit based on involuntary separation from employment without prejudice; and

(3) The employee does not claim illness as a basis for unsatisfactory performance of duties and has offered no proof of illness to the employer.

(g) When an employer is considering the discharge from employment of an employee for any one or more reasons specified in subsection (d) of this Code section, the employer shall transmit a written notice to the employee containing the following:

(1) An explanation of the conduct or deficiencies of the employee which form the basis for the employer's considering the discharge of the employee;

(2) A statement that such conduct may result in the employee's discharge from employment on a specified date, which shall not be earlier than the tenth day following the date of the notice in the case of insubordination or irresponsible performance of duties and not earlier than the thirtieth day following the date of the notice if the basis for considering the discharge of the employee is for a reason or reasons other than insubordination or irresponsible performance of duties;

(3) A statement that the employee's discharge from employment for the reasons specified in the notice shall not constitute involuntary separation from employment without prejudice within the meaning of the applicable provisions of the Employees' Retirement System of Georgia and that if discharged, the employee shall not be entitled to receive and shall not receive a retirement benefit based on involuntary separation from employment without prejudice;

(4) A statement that the employee has a right to a hearing before the employer on a specified date, which shall be at least five days prior to the date specified for the employee's discharge from employment; and

(5) A statement that at the hearing before the employer, the employee shall be given an opportunity to offer explanations for the employee's conduct or deficiencies and to present evidence on the employee's behalf.

(h) An employee being considered for discharge from employment because of insubordination or irresponsible performance of duties may be suspended without pay, except to the extent the employee has accumulated annual leave, pending the completion of the procedures provided for in subsections (g) and (i) of this Code section. If the employer's final decision is not to discharge the employee or if the employee's discharge is not upheld by the court upon judicial review provided for in Code Section 47-2-3, the compensation denied to the employee during suspension shall be reimbursed to the employee and, if applicable, accumulated leave used during the suspension shall be reinstated.

(i) If an employee subject to the provisions of subsection (g) of this Code section fails to respond to the notice sent to the employee pursuant to said subsection or if the employer is not satisfied with the explanation made by the employee for the conduct or deficiencies specified in said notice and is not satisfied with the evidence presented in the employee's behalf, the employee may be discharged from employment on the date specified in said notice or on such later date as shall be specified in writing by the employer to the employee. The employee shall be notified, in writing, of the final decision of the employer and such notice shall provide an explanation for the employer's decision.

(j) An employer discharging an employee pursuant to this Code section shall prepare a written report to the board of trustees on the discharge of the employee. Any notices or other written communications to the employee which relate to the employer's decision to discharge the employee shall be attached to and made a part of the employer's report to the board of trustees.

(k) It shall be the duty of any employer considering the discharge of an employee for any reason or combination of reasons specified in subsection (d) of this Code section to follow the procedures specified in this Code section as a condition precedent to the discharge of such employee. (Code 1981, § 47-2-2, enacted by Ga. L. 1984, p. 1296, § 2; Ga. L. 1985, p. 209, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 2009, p. 752, § 1/SB 98.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" in the first sentence of subsection (b).

Editor's notes. — Ga. L. 1984, p. 1296, § 2, enacted this Code section. Section 5 of the 1984 Act provided that this Act would become effective on January 1, 1985, only if

a proposed amendment (see Ga. L. 1984, p. 1726) to the Constitution (Ga. Const. 1983, Art. III, Sec. X, Para. VI) authorizing the General Assembly to revise provisions of public retirement or pension systems relating to involuntary separation from employment were ratified at the 1984 general election. Such approval was given at that election.

Ga. L. 1984, p. 1296, § 6, not codified by the General Assembly, provided: "Pursuant to the authority of the proposed constitutional amendment described in Section 5 of this Act and being contingent for its effectiveness on January 1, 1985, upon the ratification of such proposed constitutional amendment, this Act is exempt from the

provisions of Chapter 20 of Title 47 of the Official Code of Georgia Annotated known as the 'Public Retirement Systems Standards Law.'"

Law reviews. — For annual survey of recent developments, see 38 Mercer L. Rev. 473 (1986).

JUDICIAL DECISIONS

Litigation of employee's right to benefits. — In an action under O.C.G.A. § 47-2-3 for judicial review of an employee's discharge, the trial court exceeded the court's authority in declaring unconstitutional the provision of O.C.G.A. § 47-2-2 that employees discharged for certain reasons are not entitled to receive involuntary separation retirement benefits and ordering that the employee was entitled to such benefits, since these issues were beyond the scope of the review. Although issues relating to the propriety of the discharge may be litigated in the context of a proceeding under O.C.G.A. § 47-2-3, the employee's right to benefits must be litigated in a separate action. *Department of Pub. Safety v. Willis*, 218 Ga. App. 541, 462 S.E.2d 386 (1995), cert. denied, 517 U.S. 1210, 116 S. Ct. 1828, 134 L. Ed. 2d 933 (1996).

Involuntary separation benefits. — Employee discharged from employment for irresponsible performance of duties was not entitled to involuntary separation retirement benefits; the jury found that the employee had engaged in conduct which the employee knew or should have known would lead to separation from state employment, thus, the denial of the employee's mandamus petition seeking involuntary separation retirement benefits from the state retirement system was affirmed. *Roach v. Employees' Ret. Sys.*, 275 Ga. 447, 569 S.E.2d 540 (2002).

Cited in *Georgia Bd. of Pub. Safety v. Jordan*, 252 Ga. App. 577, 556 S.E.2d 837 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d, Pensions and Retirement Funds, § 37.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.

ALR. — Employer's liability, under state law, for fraud or misrepresentation inducing employee to take early retirement, 14 ALR5th 537.

47-2-3. Employee's right to judicial review following discharge from employment.

(a) As used in this Code section, the term:

(1) "Employee" means an employee subject to the provisions of Code Section 47-2-2 who is discharged from employment pursuant to that Code section and who is aggrieved by such discharge from employment.

(2) "Employer" shall have the same meaning as the definition of that word provided in paragraph (3) of subsection (c) of Code Section 47-2-2.

(b) An employee shall have the right to judicial review of the employee's discharge from employment pursuant to the provisions of Code Section 47-2-2. Proceedings for judicial review may be instituted by filing a petition within 30 days after the date the employee's discharge from employment

becomes final as specified in the notice sent to the employee pursuant to subsection (i) of Code Section 47-2-2. The petition may be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the employee. The petition shall state the nature of the employee's interest and the grounds as specified in subsection (f) of this Code section upon which the employee contends that the employee's discharge from employment should be reversed or modified. The petition may be amended by leave of the court. The filing of the petition does not itself stay the enforcement of the employer's decision to discharge the employee, but the reviewing court may order a stay upon appropriate terms for good cause shown.

(c) Within 30 days after service of the petition or within further time allowed by the court, the employer shall transmit to the reviewing court the original or a certified copy of the entire record, which shall include the report prepared by the employer pursuant to subsection (j) of Code Section 47-2-2, of the proceedings under review. The court may require or permit subsequent corrections or additions to the record.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and there were good reasons for failure to present it in the hearing before the employer, the court may order that the additional evidence be taken before the employer upon conditions determined by the court. The employer may modify the employer's findings and decision to discharge the employee by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(e) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the employer, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(f) The court shall not substitute its judgment for that of the employer as to the weight of the evidence on questions of fact. The court may affirm the decision of the employer or remand the case for further proceedings. The court may reverse or modify the decision of the employer to discharge the employee if substantial rights of the employee have been prejudiced because the administrative findings, inferences, conclusions, or decision of the employer were:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of statutory authority of the employer;
- (3) Affected by other error of law;
- (4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(g) If the employee or the employer is aggrieved by a final judgment of the superior court under this Code section, either such party may obtain review of such final judgment pursuant to the provisions of Code Section 5-6-35. (Code 1981, § 47-2-3, enacted by Ga. L. 1984, p. 1296, § 2.)

Editor's notes. — Ga. L. 1984, p. 1296, § 2, enacted this Code section. Section 5 of the 1984 Act provided that this Act would become effective on January 1, 1985, only if a proposed amendment (see Ga. L. 1984, p. 1726) to the Constitution (Ga. Const. 1983, Art. III, Sec. X, Para. VI) authorizing the General Assembly to revise provisions of public retirement or pension systems relating to involuntary separation from employment were ratified at the 1984 general election. Such approval was given at that election.

Section 6 of Ga. L. 1984, p. 1296, not codified by the General Assembly, provided as follows: "Pursuant to the authority of the proposed constitutional amendment described in Section 5 of this Act and being contingent for its effectiveness on January 1, 1985, upon the ratification of such proposed constitutional amendment, this Act is exempt from the provisions of Chapter 20 of Title 47 of the Official Code of Georgia Annotated known as the 'Public Retirement Systems Standards Law.'"

JUDICIAL DECISIONS

Scope of review. — In an action under O.C.G.A. § 47-2-3 for judicial review of an employee's discharge, the trial court exceeded the court's authority in declaring unconstitutional the provision of O.C.G.A. § 47-2-2 that employees discharged for certain reasons are not entitled to receive involuntary separation retirement benefits and ordering that the employee was entitled to such benefits, since these issues were beyond the scope of the review. Although issues relating to the propriety of the discharge may be litigated in the context of a proceeding under § 47-2-3, the employee's right to benefits must be litigated in a separate action. *Department of Pub. Safety v. Willis*, 218 Ga. App. 541, 462 S.E.2d 386 (1995), cert.

denied, 517 U.S. 1210, 116 S. Ct. 1828, 134 L. Ed. 2d 933 (1996).

Review of disability determination not appropriate when employee not discharged. — Superior court lacked jurisdiction for direct appellate review of the denial of a state employee's application for retirement disability benefits under O.C.G.A. § 47-2-123(b)(1). O.C.G.A. § 47-2-3 was inapplicable because the employee was not discharged from employment. *Employees' Ret. Sys. of Ga. v. Harris*, 303 Ga. App. 191, 692 S.E.2d 798 (2010).

Cited in *Georgia Bd. of Pub. Safety v. Jordan*, 252 Ga. App. 577, 556 S.E.2d 837 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 460.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 200 et seq.

ALR. — Validity of statute or ordinance providing for pensions for municipal employees, 37 ALR 1162.

ARTICLE 2

CREATION, ADMINISTRATION, AND MANAGEMENT OF THE
ASSETS OF THE RETIREMENT SYSTEM

47-2-20. Creation of retirement system; purpose, management, corporate powers and privileges, and certain rights in actions at law of retirement system; name under which retirement system to transact business.

A retirement system is established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under this chapter for employees of the state and political subdivisions thereof. It shall have the powers and privileges of a corporation and the right to bring and defend actions and to implead and be impleaded. It shall be known as the "Employees' Retirement System of Georgia," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (Ga. L. 1949, p. 138, § 2.)

JUDICIAL DECISIONS

Cited in *Bryant v. Employees Retirement Sys.*, 216 Ga. App. 737, 455 S.E.2d 839 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 311 et seq. 81A C.J.S., States, § 211 et seq.

ALR. — Constitutionality, construction, and application of statute or ordinance providing for reduction of pension or retirement benefit of public officer or employee because of independent income, 7 ALR2d 692.

47-2-21. Power and duty of board of trustees to administer and operate retirement system; membership of board; vacancies; expenses; oath; quorum.

(a) The administration and responsibility for the proper operation of the retirement system and for effectuating this chapter are vested in the board of trustees, which shall be organized immediately after a majority of the trustees have qualified and taken the oath of office.

(b) The board of trustees shall consist of seven trustees as follows:

- (1) The state auditor, ex officio;
- (2) The state treasurer, ex officio;
- (3) The commissioner of personnel administration, ex officio;

(4) One member appointed by the Governor for a term of four years, provided that the first such term was from date of appointment to June 30, 1951;

(5) Two trustees elected by the trustees set forth in paragraphs (1) through (4) of this subsection for a term of four years, provided that in their first terms one served for a term from the date of election to June 30, 1950, and the other for a term from the date of election to June 30, 1952; provided, further, that each of these two members shall have had at least five years of creditable service with an agency included in this retirement system; and

(6) The seventh trustee shall be a citizen of this state but not a member of the retirement system nor shall he hold or be a candidate for public office during his term of office as a trustee. He shall have had at least ten years of experience in the investment of moneys and shall be elected by the remaining trustees for a term of four years, provided that his first term was from the date of election to June 30, 1953.

(c) If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the original appointment or election.

(d) The trustees may receive the daily expense allowance authorized for members of the General Assembly for each day spent attending meetings of the board of trustees and any committee meetings called pursuant to authorization of the board of trustees and for time spent in necessary travel. In addition to such amount, the trustees shall be reimbursed for all actual travel and other expenses necessarily incurred through service on the board of trustees. State officials serving ex officio shall not receive the daily expense allowance but shall be entitled to reimbursement of actual expenses.

(e) Each trustee shall, within ten days after his appointment or election, take an oath of office that he will diligently and honestly administer the affairs of the board of trustees which have been entrusted to him and that he will not knowingly violate or willingly permit to be violated any law applicable to the retirement system. The oath shall be subscribed to by the trustee, certified by the officer before whom it is taken, and filed immediately in the office of the Secretary of State.

(f) Five trustees at any meeting of the board of trustees shall constitute a quorum to transact business. Each trustee shall be entitled to one vote and four votes shall be necessary for a decision by the board of trustees. (Ga. L. 1949, p. 138, § 6; Ga. L. 1951, p. 394, § 9; Ga. L. 1982, p. 3, § 47; Ga. L. 1991, p. 274, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1993, p. 1690, § 2; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in paragraph (b)(2).

JUDICIAL DECISIONS

Board finding not reviewable by certiorari. — Since it does not exercise judicial powers, certiorari does not lie to review a finding of the board. *Cantrell v. Board of Trustees of Employees' Retirement Sys.*, 135 Ga. App. 445, 218 S.E.2d 97 (1975), *aff'd*, 237 Ga. 287, 227 S.E.2d 379 (1976).
Neither O.C.G.A. § 47-2-120(a) nor O.C.G.A. § 47-2-110(a) provides a formula for the calculation of service retirement benefits; the authority to do so rests with the Board of Trustees of the Employees Retirement System of the State of Georgia (ERS)

under the general grant of authority in O.C.G.A. § 47-2-21 to effectuate the provisions of the ERS Act, O.C.G.A. § 47-2-1 et seq., including the specific grants of authority found in O.C.G.A. §§ 47-2-26(a) and 47-2-28(a) and (b). *Alverson v. Employees' Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).
Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968); *Teachers Retirement Sys. v. City of Atlanta*, 249 Ga. 196, 288 S.E.2d 200 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1253 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 70 C.J.S., Pensions, §§ 10, 12 et seq., 15. 81A C.J.S., States, § 213 et seq.

47-2-22. Election of chairman and director; actuarial services; application of the State Personnel Administration; payment of costs of the State Personnel Administration.

- (a) The board of trustees shall elect a chairman from its membership and shall employ a director who shall not be a trustee.
- (b) The board of trustees shall engage such actuarial and other services as shall be required to transact the business of the retirement system.
- (c) The director and all other employees of the board of trustees shall be governed by such rules of position, classification, appointment, promotion, demotion, dismissal, transfer, qualification, compensation, seniority, privileges, tenure, and other employment standards as may now or hereafter be established under the State Personnel Administration.
- (d) The board of trustees shall pay its pro rata share of the administrative costs of operating the State Personnel Administration in the manner prescribed in paragraph (6) of subsection (b) of Code Section 45-20-4. (Ga. L. 1949, p. 138, § 6; Ga. L. 2009, p. 752, § 1/SB 98.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Person-

nel Administration” at the end of subsection (c) and in the middle of subsection (d).

JUDICIAL DECISIONS

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968).

47-2-23. Treasurer of the board of trustees; manner of payment of funds of the retirement system; surety bond for the treasurer.

There shall be a treasurer of the board of trustees, who shall be appointed by it and subject to its rules and regulations. He shall be the treasurer of the assets of the retirement system. Payments of the funds of the retirement system shall be made by the treasurer only upon vouchers signed by the treasurer and countersigned by one other person designated by the board of trustees. The treasurer of the board of trustees shall furnish to the board of trustees a surety bond of a company authorized to do business in this state in such an amount as shall be required by the board of trustees, provided that if the treasurer is a corporate trustee authorized to do business as such under the laws of this state, the trustees, in their discretion, may decide that no such bond be furnished. The premium on the surety bond shall be paid from the expense fund. (Ga. L. 1949, p. 138, § 7.)

JUDICIAL DECISIONS

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 81A C.J.S., States, § 213 et seq.

47-2-24. Designation of medical board; duties.

The board of trustees shall designate a medical board of three physicians who are not eligible to participate in the retirement system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under this chapter and shall report in writing to the board of trustees its conclusions and recommendations upon all the matters referred to it. (Ga. L. 1949, p. 138, § 6.)

JUDICIAL DECISIONS

Medical board may examine employee in “special cases.” — Legislature empowers the medical board to arrange for the personal medical examination of an employee in “special cases.” *Cantrell v. State*, 129 Ga. App. 465, 200 S.E.2d 163 (1973), aff’d, 231 Ga. 704, 203 S.E.2d 493 (1974), overruled in part on other grounds, *Cantrell v. Board of Trustees of Employees’ Retirement Sys.*, 135 Ga. App. 445, 218 S.E.2d 97 (1975).

“Special cases” includes when employee contests finding of medical board which limited the board’s consideration to the data submitted by the employer. *Cantrell v. State*, 129 Ga. App. 465, 200 S.E.2d 163 (1973),

aff’d, 231 Ga. 704, 203 S.E.2d 493 (1974), overruled in part on other grounds, *Cantrell v. Board of Trustees of Employees’ Retirement Sys.*, 135 Ga. App. 445, 218 S.E.2d 97 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Refusing copies of reports to applicant for benefits. — If the medical board of the Employees Retirement System determines that the examining physician has met the criteria of O.C.G.A. § 31-33-2(c) in recommending nondisclosure of medical records,

prepared in the evaluation of a claim for disability retirement benefits, it is appropriate to refuse copies of those reports to the applicant who was examined. 1992 Op. Att’y Gen. No. 92-19.

47-2-25. Legal adviser of the board of trustees.

The Attorney General shall be the legal adviser of the board of trustees. (Ga. L. 1949, p. 138, § 6; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “adviser” for “advisor” in the middle of this Code section.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-2-26. Designation of an actuary; duties of actuary; annual valuation of contingent assets and liabilities of the retirement system.

(a) The board of trustees shall designate an actuary who shall be its technical adviser on matters regarding the operation of the funds created under this chapter and who shall perform such duties as are required in that regard.

(b) At least every five years, the actuary shall conduct an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system and shall recommend for adoption by the board of trustees mortality, service, and other tables needed in the operation of the system. Taking into account the results of such investigations, the board of trustees shall from time to time adopt for the retirement system such mortality, service, and other tables as it shall deem necessary for use in all calculations required in connection with this retirement system. The board of trustees shall also determine from

time to time the rate of regular interest to be used by the retirement system, which rate shall be limited to a minimum of 2 percent.

(c) On the basis of the rate of regular interest and the tables last adopted by the board of trustees, the actuary shall make annual valuations of the contingent assets and liabilities of the retirement system. (Ga. L. 1949, p. 138, § 6; Ga. L. 1971, p. 418, § 1; Ga. L. 1983, p. 637, § 1; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “adviser” for “advisor” in the middle of subsection (a).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

JUDICIAL DECISIONS

Authority to determine service retirement benefits. — Neither O.C.G.A. § 47-2-120(a) nor O.C.G.A. § 47-2-110(a) provides a formula for the calculation of service retirement benefits; the authority to do so rests with the Board of Trustees of the Employees Retirement System of the State of Georgia

(ERS) under the general grant of authority in O.C.G.A. § 47-2-21 and more specific grants of authority in O.C.G.A. §§ 47-2-26 and 47-2-28. *Alverson v. Employees’ Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968).

OPINIONS OF THE ATTORNEY GENERAL

No “regular interest” accrues while member not in service. — Since contributions and interest are all that accrue to an account of a member of the retirement system, and since Ga. L. 1959, p. 107, § 2 (see O.C.G.A. § 47-2-70(c)) expressly stated that contribu-

tions shall not be made while a member is not in service, it necessarily followed that the word “benefit” must be construed to mean “regular interest.” 1971 Op. Att’y Gen. No. 71-26.

47-2-27. Duty of board of trustees to keep data necessary for actuarial valuations; duty to keep records of proceedings; annual report.

(a) The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuations of the various funds of the retirement system and for checking the experience of the retirement system.

(b) The board of trustees shall keep a record of all of its proceedings, which record shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the retirement system for the

preceding year, the amount of the accumulated cash and securities of the retirement system, and the last balance sheet showing the financial condition of the retirement system by means of an actuarial valuation of the contingent assets and liabilities of the retirement system. (Ga. L. 1949, p. 138, § 6.)

JUDICIAL DECISIONS

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968).

47-2-28. Simplified tables for estimation of retirement allowances; effect on existing rights and benefits; formula for calculating service retirement allowances.

(a) On and after April 1, 1964, the board of trustees is authorized to adopt simplified benefit tables which will enable a member to estimate his or her retirement allowances. Such tables shall (1) be based on an actuarial study, (2) maintain the actuarial soundness of the retirement system, (3) for those members retiring on and after April 1, 1968, be applied to the member's highest average monthly earnable compensation during a period of 24 consecutive calendar months while a member of the retirement system, and (4) be applicable to all members, provided that the application of such tables shall not reduce or impair the amount of any allowances or benefits to which any person who was a member on April 1, 1964, would have been entitled at that time or would be entitled at any time thereafter under tables or calculations which were in effect at that time or at any time prior thereto or at any time prior to the adoption of such simplified benefit tables.

(b) The regular service retirement allowance payable to a member pursuant to the provisions of this chapter, prior to the application of any minimum benefit formula otherwise provided under this chapter, shall be determined pursuant to the formula adopted from time to time by the board of trustees for such purpose. Such formula shall be uniformly applicable to all members similarly situated. The board of trustees may establish rules and administrative procedures uniformly applicable to all members similarly situated relating to the calculation of such service retirement allowance. (Ga. L. 1949, p. 138, § 6; Ga. L. 1959, p. 107, § 6; Ga. L. 1964, p. 119, § 1; Ga. L. 1968, p. 1356, § 4; Ga. L. 1998, p. 1104, § 1; Ga. L. 2005, p. 535, § 5/HB 460; Ga. L. 2010, p. 1207, § 4/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted former subsection (a), which read: "Any other law to the contrary notwithstanding, the board of trustees, for the purpose of administering the social security program, may, with due regard for the actu-

arial soundness of the retirement system and after an actuarial investigation into its benefit structure, adopt such tables, calculations, and compensation and deduction schedules as it shall deem desirable in connection with the proper operation of the retirement sys-

tem. All tables, calculations, and compensation and deduction schedules adopted under this Code section shall be based on final monthly earnings, which shall mean monthly earnable compensation as reflected by monthly contributions during employment, except that no salary increase by adjustment in compensation in any manner during the last 12 months, which increase is in excess of 10 percent, shall be included. Such tables and calculations as may be adopted shall not diminish or impair the amount of any allowances or benefits which would have been payable to the member by use of tables or calculations that were in effect on January 1, 1959. The board of trustees may also, from time to time, establish rules and regulations for the administration of the funds created under this chapter and for the transaction of its business.”; and redesignated former subsections (b) and (c) as present subsections (a) and (b), respectively.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

JUDICIAL DECISIONS

Authority to determine service retirement benefits. — Neither O.C.G.A. § 47-2-120(a) nor O.C.G.A. § 47-2-110(a) provides a formula for the calculation of service retirement benefits; the authority to do so rests with the Board of Trustees of the Employees Retirement System of the State of Georgia

(ERS) under the general grant of authority in O.C.G.A. § 47-2-21 and more specific grants of authority in O.C.G.A. §§ 47-2-26 and 47-2-28. *Alverson v. Employees’ Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968).

OPINIONS OF THE ATTORNEY GENERAL

Court reporter makes employee contributions. — Employee contributions to the retirement system must be made by court

reporter for appellate courts. 1970 Op. Att’y Gen. No. U70-87.

47-2-29. Postretirement benefit adjustments.

(a) On a date to be established by the board of trustees, but not before April 1, 1967, the board of trustees is authorized to adopt a method of providing for postretirement benefit adjustments for the purpose of maintaining essentially no less purchasing power for a beneficiary in his postretirement years. Such method shall be based upon:

- (1) Recommendation of the actuary for the board of trustees;
- (2) Maintaining the actuarial soundness of the retirement system;
- (3) Its application to the retirement income of members retiring on or after the adoption of such method by the board of trustees; and

(4) Any additional contribution by the member in an amount not to exceed one-fourth of 1 percent of his monthly earnable compensation.

This Code section shall also be applicable to those members retiring before April 1, 1967.

(b) Notwithstanding any other provision of this Code section, no member who becomes a member of this retirement system on or after July 1, 2009, shall be entitled to receive any postretirement benefit adjustment. (Ga. L. 1967, p. 751, § 3; Ga. L. 1968, p. 1356, § 3; Ga. L. 1971, p. 339, § 1; Ga. L. 1988, p. 1482, § 1; Ga. L. 2009, p. 320, § 2/HB 452; Ga. L. 2010, p. 1207, § 5/SB 436.)

The 2009 amendment, effective July 1, 2009, added subsection (c).

The 2010 amendment, effective July 1, 2010, deleted former subsection (b), which read: “(b)(1) Effective July 1, 1988, the monthly retirement benefit of each beneficiary who was receiving a benefit on July 1, 1981, shall be increased by:

“(A) One dollar for each full year of creditable service, other than creditable service based on forfeited annual and sick leave and creditable service resulting from any projection of service under the provisions of this chapter, which the member had at the time of retirement; plus

“(B) One dollar for each full year which has elapsed from the date of retirement until July 1, 1981,

“provided that, if a beneficiary is receiving a monthly benefit exceeding \$1,500.00 on July 1, 1988, no increase shall be granted to such beneficiary under this paragraph nor shall any portion of such increase be granted to a beneficiary which would cause such beneficiary's total monthly benefit as of July 1, 1988, to exceed \$1,500.00.

“(2) When the postretirement benefit adjustment provided by this subsection has been granted, there shall be no further postretirement benefit adjustments pursuant to the authority of this subsection.”; and redesignated former subsection (c) as present subsection (b).

Editor's notes. — Ga. L. 2009, p. 320, § 1, not codified by the General Assembly, provides that: “The General Assembly is desirous of providing an established annual cost-of-living adjustment to all current active and retired members of the Employees' Retirement System of Georgia, the Georgia Legislative Retirement System, and the Georgia Judicial Retirement System. In order to do so, limiting future liability of the systems by adjusting the retirement expectations of persons who are newly employed is a regrettable but necessary step toward fiscal soundness.”

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

OPINIONS OF THE ATTORNEY GENERAL

Appropriations Act may not place ceiling on adjustment. — General Assembly cannot, solely through language in an appropriations Act, place a ceiling or limit on the

amount of a cost-of-living increase granted to a retiree of the Employees' Retirement System or Teachers Retirement System. 1984 Op. Att'y Gen. No. 84-19.

47-2-30. Deposits of cash available for disbursements for benefits and other payments.

For the purpose of meeting disbursements for pensions, annuities, and other payments, cash may be kept available on deposit in one or more banks or trust companies organized under the laws of this state or of the United States, provided that the sum on deposit in any one bank or trust company shall not exceed 25 percent of the paid up capital and surplus of each bank or trust company; and provided, further, that each bank or trust company shall either give a depository bond in an amount sufficient to cover the deposits or place in trust a sufficient amount of federal or state securities to cover the deposits. (Ga. L. 1949, p. 138, § 7.)

JUDICIAL DECISIONS

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968).

47-2-31. Investment powers; power to employ agents as investment advisers and to make investments.

(a) The board of trustees shall be the trustees of the funds and shall have full power to invest and reinvest the assets of the retirement system and to purchase, hold, sell, assign, transfer, and dispose of any securities and other investments in which assets of the retirement system have been invested, any proceeds of any investments, and any money belonging to the retirement system; provided, however, that such power shall be subject to all terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the “Public Retirement Systems Investment Authority Law.”

(b) The board of trustees is authorized to employ agents, including, but not limited to, banks or trust departments, and to contract with such agents for their services as investment advisers and counselors who will make recommendations for investments and make investments, if the board of trustees so authorizes. (Ga. L. 1949, p. 138, § 7; Ga. L. 1963, p. 546, § 1; Ga. L. 1968, p. 1356, § 5; Ga. L. 1995, p. 651, § 1; Ga. L. 2000, p. 2, § 4; Ga. L. 2005, p. 535, § 6/HB 460; Ga. L. 2006, p. 93, § 1/SB 466.)

JUDICIAL DECISIONS

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968); *Teachers Retirement Sys. v. City of Atlanta*, 249 Ga. 196, 288 S.E.2d 200 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Board may make legal loans. — Retirement system, having the same investment powers as domestic insurers pursuant to Ga. L. 1963, p. 546, § 1 (see O.C.G.A. § 47-2-31), may make such loans (so long as the limitations of Ga. L. 1960, p. 289, § 1

(see O.C.G.A. § 33-11-25(a)(1)(D)) are observed), as the board of trustees so desires. 1963-65 Op. Att'y Gen. p. 385.

47-2-32. Personal interest in gains or profits from investments made by the board of trustees; unauthorized use of assets of the retirement system.

Except as otherwise provided in this chapter, no trustee or employee of the board of trustees shall have any personal interest in the gains or profits from any investment made by it or use in any manner, directly or indirectly, for himself or as an agent, the assets of the retirement system, except to make such payments as are authorized by the board of trustees in accordance with this chapter. (Ga. L. 1949, p. 138, § 7.)

JUDICIAL DECISIONS

Cited in Ross v. Odom, 401 F.2d 464 (5th Cir. 1968).

47-2-33. Plan year designated.

For purposes of complying with federal Internal Revenue Service rules and regulations, the plan year for this retirement system shall be the 12 month period beginning on July 1 of each year. (Code 1981, § 47-2-33, enacted by Ga. L. 2009, p. 947, § 13/HB 202.)

Effective date. — This Code section became effective May 11, 2009.

ARTICLE 3

**EMPLOYEE AND EMPLOYER CONTRIBUTIONS AND
CREATION OF FUNDS FOR CONTRIBUTIONS,
BENEFITS, AND ADMINISTRATIVE
EXPENSES**

JUDICIAL DECISIONS

Cited in Ross v. Odom, 401 F.2d 464 (5th Cir. 1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 81A C.J.S., States, § 213 et seq.

ALR. — Validity of statute or ordinance providing for pensions for municipal employees, 37 ALR 1162.

47-2-50. Funds in which assets of the retirement system to be held.

All the assets of the retirement system shall be credited, according to the purpose for which they are held, among three funds, to be known as the “annuity savings fund,” the “pension accumulation fund,” and the “expense fund.” (Ga. L. 1949, p. 138, § 8; Ga. L. 1973, p. 900, § 2.)

47-2-51. Annuity savings fund and employee contributions to it; deductions; effect of default with respect to employer contributions; payments, withdrawal, or transfer of funds.

(a) The annuity savings fund shall be the fund in which shall be accumulated the contributions deducted from the compensation of members in order to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

(1) Each employer shall cause 5 percent of the earnable compensation to be deducted from the salary of each member for each and every payroll period; but the employer shall not have any such deduction taken from the compensation of a member who elects not to contribute if he has attained 65 years of age or has completed 35 or more years of service. In determining the amount earnable by a member in a payroll period, the employer may consider the annual rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit the deduction from compensation for any period less than a full payroll period if the employee was not a member on the first or last day of the payroll period. In order to facilitate the making of deductions, the employer may modify the deductions required of any member but not by more than one-tenth of 1 percent of the annual compensation from which such deductions are to be made. Each employer shall immediately pay amounts deducted to the board of trustees, in such manner as the board of trustees shall prescribe, which amounts shall be credited by the board of trustees to the member’s account in the annuity savings fund. Beginning July 1, 1980, the employee contributions required under this chapter shall be paid as provided in Code Section 47-2-54;

(2) The deductions under paragraph (1) of this subsection shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made under paragraph (1) of this subsection; and payment of salary or compensation less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this chapter;

(3) In addition to the contributions deducted from the compensation of members under paragraph (1) of this subsection and subject to the

approval of the board of trustees and such conditions as it may prescribe, any member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, all or any part of amounts that he previously withdrew from it under this chapter; or, subject to such approval and conditions, any member may deposit therein, by a single payment or by an increased rate of contribution, an amount computed to be sufficient to purchase an additional annuity which, together with his prospective retirement allowance, will provide for him a total retirement allowance of not more than one-half of his average final compensation, provided that for this purpose a member shall be deemed to have retired at age 65 and amounts earned after reaching that age shall not be included in average final compensation. Such additional amounts so deposited shall become a part of the member's accumulated contributions, provided that upon retirement they shall be treated as excess contributions returnable to the member as an annuity of equivalent actuarial value and shall not be considered in computing the pension; and

(4) Notwithstanding paragraphs (1) through (3) of this subsection, no deductions shall be made from a member's salary if the employer's contribution as to such member is in default.

(b) The accumulated contributions of a member, which contributions are withdrawn by him or are payable in the event of his death, shall be paid from the annuity savings fund. Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings fund to the pension accumulation fund. (Ga. L. 1949, p. 138, § 8; Ga. L. 1973, p. 900, § 3; Ga. L. 2000, p. 131, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

When member eligible to cease contributions. — Member of the retirement system who has attained 34 years of creditable service, and who is eligible for service retirement and the projection-in-service factor, regardless of age, may elect to cease making contributions to the retirement system, and any member who has continued making contributions after attaining 34 years of creditable service under the assumption that this was required by law would be eligible, upon the member's election and request, to be refunded the excess contributions made

after the attainment of the member's thirty-fourth year of service. 1978 Op. Att'y Gen. No. 78-47.

Section applicable beginning 1974. — Provisions of this statute, which authorizes the board of trustees to raise the rate of contribution by the employer, are applicable to members of the retirement system who elect to retire with a retirement commencement date of July 1, 1974. 1974 Op. Att'y Gen. No. 74-47 (rendered under Ga. L. 1974, p. 1177, § 2).

47-2-52. Employer's duty to deduct and report employee contributions; duty of chief fiscal officer to remit employee contributions; effect of failure to comply.

Each employer responsible for the payment of compensation to contributing members shall deduct and collect from each member's salary the employee contributions required under the retirement system and shall make a monthly report of such actions in such manner and form as are required by the chief fiscal officer of his employer. Such deductions may be made from future payments or reimbursement check to the employer. It shall be the duty of the chief fiscal officer of each employer to make monthly remittance of employees' contributions to the board of trustees. Should any employer fail to collect employee contributions or to make reports as required in this Code section, the appropriate employer shall withhold all funds allotted to such employer until he has fully complied with this Code section. (Ga. L. 1949, p. 138, § 13.)

JUDICIAL DECISIONS

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968).

47-2-53. Effect of failure of any employee, employer, or reporting official to make contributions or to make reports with respect to employment and membership.

Any other provisions of law to the contrary notwithstanding, if any employee, his employer, or the designated reporting official fails to make such reports properly as are required under this chapter with respect to employment or membership or to make contributions, the board of trustees, after having exhausted all administrative efforts to obtain such reports or contributions, is authorized to and shall declare null and void any and all benefits which would have otherwise accrued to the employee if the proper reports and contributions had been made, provided that those contributions which had been previously credited to the individual's annuity savings fund shall be forthwith refunded. In addition, such individual shall no longer be a member nor henceforth be eligible for membership. (Ga. L. 1961, p. 143, § 6; Ga. L. 1973, p. 900, § 10.)

47-2-54. Payment of state employee contributions on behalf of employees; inclusion of contributions in compensation for determining benefits; adjustment in compensation of state employees; "pick-up" contributions.

(a) As used in this Code section, the term "member" shall not include a member who, prior to July 1, 1980, elected to cease making contributions to the retirement system.

(b) On and after July 1, 1980, each employer shall pay to the retirement system, on behalf and to the credit of each member during each and every payroll period (1) the employee membership contributions specified in Code Section 47-2-51 for membership service acquired after June 30, 1980, and (2) the group term life insurance contributions required under Code Section 47-2-128 for group term life insurance coverage, except that each employer shall continue to cause to be deducted from the earnable compensation of each member for each and every payroll period one-half of 1 percent of his earnable compensation.

(c) Of the one-half of 1 percent deducted from the earnable compensation of members, one-quarter of 1 percent shall be credited to each member's account in the annuity savings fund, and the remaining one-quarter of 1 percent shall be credited to the group term life insurance fund, as provided in Code Section 47-19-10, in lieu of the deduction required under Code Section 47-2-128. If a member is not covered by group term life insurance, the entire one-half of 1 percent deducted from his earnable compensation shall be credited to his individual account in the annuity savings fund.

(d) The monthly employee contributions made by the employer on behalf of any member under this Code section shall be used in the computation of the member's earnable compensation for the purpose of computing retirement benefits and group term life insurance payments, if applicable.

(e) All members shall retain, have, and be subject to all other rights, privileges, obligations, and duties specified by other provisions of this chapter; and all such other provisions shall remain of full force and effect with respect to any matter not specifically provided for in this Code section.

(f) With respect to members covered by Code Section 47-2-244, the employers shall pay employee contributions on the same basis as under subsection (b) of this Code section. Such members shall continue to have deducted from their earnable compensation the additional amount of employee contributions required by Code Section 47-2-244.

(g) With respect to any persons who have retired or who will retire under Code Section 47-2-244, the contributions paid under subsection (e) of this Code section shall be included in current salary and used for the purpose of computing the monthly retirement benefits under Code Section 47-2-244 and for the purpose of computing group term life insurance payments, if applicable. The monthly retirement benefit of each person who retired before July 1, 1980, shall be increased accordingly, effective July 1, 1980.

(h) This Code section shall not apply to city or county officials or employees who are members of the retirement system but who are considered state employees only for the purpose of membership in the retirement system, provided that this Code section shall apply to officials

and employees of county boards of health who are members of the retirement system.

(i) It is determined by the General Assembly of Georgia that an adjustment in the compensation of state employees is necessary to assure the future actuarial soundness of the Employees' Retirement System of Georgia and to preserve and protect the fiscal integrity of the Employees' Retirement System of Georgia so as to ensure the future payment of retirement benefits and allowances to those entitled to same. Therefore, in addition to the employee membership contributions required by subsections (b) and (c) of this Code section, from and after July 1, 1982, as an adjustment in compensation, each employer shall cause to be deducted from the earnable compensation of each member for each and every payroll period an additional 1 percent of such earnable compensation. This additional 1 percent deducted from the earnable compensation of members shall be paid monthly to the board of trustees and shall be credited to the individual accounts of the members in the annuity savings fund. This subsection shall not be construed and is not intended so as to have any effect whatsoever on any amounts of contributions paid to any retirement system other than the Employees' Retirement System of Georgia.

(j) The employee contributions described in this Code section that are credited to the member's annuity savings account, although designated as employee contributions, are being paid by the employer as "pick-up" contributions in accordance with Section 414(h) of the federal Internal Revenue Code. As such, these contributions are mandatory and no member is entitled under any circumstances to receive such contributions in cash in lieu of having them contributed to the retirement system. Such contributions shall be 100 percent vested for all purposes under the retirement system. (Ga. L. 1980, p. 925, § 3; Ga. L. 1982, p. 3, § 47; Ga. L. 1982, p. 1163, §§ 1, 3; Ga. L. 1985, p. 209, § 1; Ga. L. 2007, p. 176, § 1/HB 448; Ga. L. 2009, p. 947, § 14/HB 202.)

The 2009 amendment, effective May 11, 2002, added subsection (j).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of 1980 amendment. — The 1980 amendment to this and related sections was enacted, in part, to provide state employees with increases in disposable income through the employer's payment of most of the employee contributions to the Employees' Retirement System. Rather than making this contribution personally, a state employee will, subsequent to July 1, 1980, take home most of the amount of the employee's previous employee contributions. 1980 Op. Att'y Gen. No. 80-91.

Eligible members discontinuing contributions entitled to salary increase. — Members of the Employees' Retirement System who attain 34 years of creditable service and elect to discontinue employee contributions during the 1981 fiscal year are entitled to an 8 percent salary increase at the time of such discontinuance, payable from funds appropriated for such purpose by the 1981 Appropriations Act (Ga. L. 1980, p. 1799). 1980 Op. Att'y Gen. No. 80-91.

47-2-55. Pension accumulation fund; purposes; employer contributions; crediting of interest and dividends earned on funds of the retirement system.

The pension accumulation fund shall be the fund in which shall be held the reserves for all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities under this chapter. If a beneficiary is restored to membership, his or her annuity reserve shall be transferred from the pension accumulation fund to his or her individual account in the annuity savings fund. The pension accumulation fund shall also be the fund in which are accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which are paid all such pensions and other benefits. Employer contributions shall consist of a percentage of the earnable compensation of members, to be known as the "normal cost contribution," and an additional percentage of such earnable compensation, to be known as the "unfunded accrued liability contribution." These contributions shall be borne by appropriations from state and federal funds. The percentage rate of each portion of the employer contribution shall be fixed on the basis of the liabilities of the retirement system, as shown by actuarial valuation, as provided for in subsection (b) of Code Section 47-2-26, subject to the provisions of Code Section 47-20-10. All interest and dividends earned on the funds of the retirement system shall be credited to the pension accumulation fund. Once each year the board of trustees shall transfer from the pension accumulation fund to the annuity savings fund such amounts as are sufficient to allow regular interest on the balances of the individual accounts of members in the annuity savings fund. (Ga. L. 1949, p. 138, § 8; Ga. L. 1964, p. 119, § 2; Ga. L. 1973, p. 900, §§ 5, 6, 7, 10; Ga. L. 2005, p. 535, § 7/HB 460; Ga. L. 2006, p. 93, § 1/SB 466.)

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Employer's contribution not refunded if employee terminated during probation. — Employer's contribution to the retirement system may not be refunded if the employee

resigns or is otherwise terminated during the employee's probationary period. 1974 Op. Att'y Gen. No. 74-55.

47-2-56. Maintenance of annuity and pension reserves and payment of benefits under this chapter as obligations of the pension accumulation fund; permissible uses of assets of the fund.

The maintenance of annuity reserves and pension reserves, the crediting of regular interest to the annuity savings fund under Code Section 47-2-55, and the payment of all pensions, annuities, retirement allowances, refunds, and other benefits granted under this chapter shall be obligations of the pension accumulation fund, except as provided in paragraph (3) of subsection (c) of Code Section 47-2-128. All assets of the pension accumu-

lation fund and all income, interest, and dividends derived from deposits and investments shall be used for the payment of such obligations and for no other purposes. (Ga. L. 1949, p. 138, § 11; Ga. L. 1973, p. 900, § 9; Ga. L. 1991, p. 130, § 1.)

47-2-57. Certification of normal cost and unfunded accrued liability contribution rates to employers; provision in employer's budget for employer contributions.

On or before June 1 of each year, the normal cost and unfunded accrued liability contribution rates, as determined on the basis of the last actuarial valuation, shall be certified by the board of trustees to the director or chief administrative officer of each employer having members in its employ. Each such employer shall make provision in its annual budget for funds with which to pay to the board of trustees an amount equal to the normal cost contributions and the unfunded accrued liability contributions on the earnable compensation of all contributing members under their administration and for an additional amount as expense for the operation of the retirement system. (Ga. L. 1949, p. 138, § 8; Ga. L. 1973, p. 900, § 10; Ga. L. 2005, p. 535, § 8/HB 460.)

47-2-58. Commencement date for contributions to retirement system.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 6, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1949, p. 138, § 8; Ga. L. 1973, p. 900, § 10.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-59. Effective date of chapter; effect of budget appropriations on obligation of state agency or other employer to make contributions.

This chapter shall become effective on February 3, 1949, but neither a state agency nor any other employer or member shall be obligated to make contributions for the pensions and annuities under this chapter until after that agency or other employer has made provision in its annual budget for funds for the contribution of its part of such pensions and annuities. (Ga. L. 1949, p. 138, § 16.)

47-2-60. Expense fund; purposes.

The expense fund shall be the fund to which shall be credited state or federal funds, or both, to pay the administrative expense of the retirement system and from which shall be paid all expenses incurred in the administration and operation of the retirement system. (Ga. L. 1949, p. 138, § 8; Ga. L. 1973, p. 900, § 10.)

ARTICLE 4

MEMBERSHIP IN THE RETIREMENT SYSTEM

47-2-70. Determination of membership; termination of membership.

(a) After January 1, 1950, any person who becomes an employee of any employer which operates under a merit system of personnel administration and which is covered by the retirement system shall become a member of the retirement system as a condition of his or her employment, except as otherwise specifically excluded.

(b) The membership of any person shall terminate if he or she retires under this retirement system, withdraws his or her contributions, or renders less than one year of service within a period of five consecutive years as a member. No benefit under the retirement system shall accrue to a member's account while he or she is not in service as an employee and no contribution shall be made to the retirement system by the member, the state, or any other employer during any such time.

(c) The board of trustees may continue the membership of any person while such person is on leave of absence with stipend for professional training when such leave is approved in writing by the employer for which the employee renders service, provided that a member who receives a stipend while on leave for professional training shall make a monthly contribution to the retirement system, which contribution shall be the same basic percentage of his or her salary as an employee as he or she contributed in the last month prior to the effective date of leave. A member shall be considered as being in service while on such leave. (Ga. L. 1949, p. 138, § 3; Ga. L. 1951, p. 394, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 349, § 2; Ga. L. 1959, p. 107, § 2; Ga. L. 2010, p. 1207, § 7/SB 436.)

The 2010 amendment, effective July 1, 2010, inserted "or her" near the end of subsection (a); deleted former subsection (b), which read: "Any person who was an employee during the fiscal year ending June 30, 1949, or who becomes an employee prior to January 1, 1950, shall become a member unless prior to January 1, 1950, he files with the board of trustees, on a form provided by

it, a notice of his election not to be included in the membership of the retirement system, together with a duly executed waiver of all present and prospective benefits which would otherwise accrue to him by participating in the retirement system. Such an employee may thereafter apply for and be admitted to membership, but without credit for service rendered after July 1, 1949, and

prior to the time he becomes a member and without prior service credit, unless he pays into the retirement system the amount of deductible contributions that would have been paid by such member together with interest on such amount equal to the amount of interest earned by the retirement system at 3 1/2 percent per annum had the amounts been paid in during the period. Upon making such payments, he shall be entitled to all service credits from the year 1949.”; redesignated former subsections (c) and (d) as present subsections (b) and (c), respectively; in present subsection (b), inserted “or she” twice and inserted “or her” in the first sentence; and, in the first sentence of present subsection (c), inserted “or her” and inserted “or she”.

Editor’s notes. — Ga. L. 2010, p. 1207,

§ 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

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Governor’s office is statutorily covered agency. — All officials and employees of any state department or agency are included within the Employees’ Retirement System of Georgia, whether such officials and employees are in the classified or unclassified service; the Governor’s office would be includable as a department or agency within the meaning of Ga. L. 1949, p. 138 et seq. 1973 Op. Att’y Gen. No. 73-39.

Historic Chattahoochee Commission is not a statutorily covered agency within the meaning of Ga. L. 1949, p. 138 et seq. 1979 Op. Att’y Gen. No. 79-14.

Department of Education employees included. — Under existing law, current and future employees of the State Department of Education must be included within the membership of the Employees’ Retirement System of Georgia. 1983 Op. Att’y Gen. No. 83-2.

Since the employees of the State Department of Education are employed within a state board or department, the mandatory inclusion under the Employees’ Retirement System in O.C.G.A. § 47-2-70 completely supplanted and repealed by implication any inclusion of such employees under the definition of “teacher” in O.C.G.A. § 47-3-1(28). 1983 Op. Att’y Gen. No. 83-2.

Ga. L. 1953, Jan.-Feb. Sess., p. 349, § 2 (see O.C.G.A. § 47-2-70) does not apply to Ga. L. 1953, Nov.-Dec. Sess., p. 305, §§ 1-5

(see O.C.G.A. § 47-2-290). 1957 Op. Att’y Gen. p. 225.

Interest should not accrue when member out of service. — Interest should not accrue to member’s account while member is not in service as employee. 1971 Op. Att’y Gen. No. 71-26.

Former member cannot claim increase by law authorizing additional benefits. — Primary “object” or purpose of the language in subsection (c) of this statute is to prevent a former member presently receiving a retirement benefit from claiming increased benefits as a result of an amendment to the law authorizing such additional benefits to existing members; this was not intended to prevent a former member from obtaining service credits or benefits which one is rightfully entitled to prior to one’s retirement, but which one never receives by virtue of an honest mistake or error in one’s records. 1976 Op. Att’y Gen. No. 76-58 (see O.C.G.A. § 47-2-70).

Provision in subsection (c) of this statute, that no benefit under the retirement system shall accrue to a member’s account while the member is not in service as an employee, was intended to prevent a former member presently receiving a retirement benefit from claiming increased benefits as a result of any amendment to the law authorizing additional or increased benefits for existing members. 1977 Op. Att’y Gen. No. 77-24 (see O.C.G.A. § 47-2-70).

Right to receive a retirement allowance after 25 years of service, provided for in O.C.G.A. § 47-2-120(e), is not a new "bene-

fit" that has accrued and is not proscribed by subsection (c) of O.C.G.A. § 47-2-70. 1999 Op. Att'y Gen. No. 99-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1197 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 81A C.J.S., States, § 216.

47-2-70.1. Employees of new state agencies.

(a) As used in this Code section, the term:

(1) "Employee" means full-time officers and employees of a new state agency; provided, however, that such term shall not mean an individual classified by an employer as an independent contractor or a leased employee within the meaning of Section 414(n) of the Internal Revenue Code, even if such individual is later reclassified by the Internal Revenue Service as a common law employee.

(2) "Employer" means a new state agency paying the compensation of an employee.

(3) "New state agency" means any department, division, board, bureau, commission, institution, or other agency of the state or any state public authority which first becomes established or active on or after July 1, 1992.

(4) "State public authority" means any public authority or public corporation created by general law to carry out state purposes or functions, and the term does not include public authorities created by general law to carry out purposes or functions within or on behalf of counties, municipalities, or other political subdivisions and which are activated by action of individual political subdivisions.

(b) Except as otherwise provided by subsection (c) of this Code section, the employees of a new state agency shall be members of the retirement system as a condition of employment without the necessity of any further amendment to this chapter to include specifically such employees as members of the retirement system. The employers of such employees shall have the same duties and obligations that are applicable to other employers under the retirement system. The employees of new state agencies shall be subject to the provisions of Code Section 47-2-334, except that if a member of the retirement system becomes an employee of a new state agency without any break in service, the member shall retain the same status which the member possessed at the time of becoming an employee of the new state agency.

(c) If the law which establishes or activates a new state agency prohibits officers or employees of the new state agency from being members of the

retirement system or limits membership to specified officers or employees of the new state agency, then the provisions of such law shall control over the provisions of subsection (b) of this Code section.

(d)(1) As used in this subsection, the term:

(A) "Corporation" means the Georgia Lottery Corporation created by Code Section 50-27-4.

(B) "Section 401(k) plan" means the deferred compensation plan offered by the state for public employees pursuant to Section 401(k) of the federal Internal Revenue Code on July 1, 1998, as now or subsequently amended.

(C) "Termination date" means the earlier of:

(i) The date on which the corporation receives a favorable ruling from the federal Internal Revenue Service as to the corporation's participation in the Section 401(k) plan; or

(ii) The date on which the corporation establishes a tax qualified retirement plan for its officers and employees.

(2) Notwithstanding the provisions of subsection (c) of this Code section, no person employed as an officer or employee of the corporation on or after the termination date shall be a member of this retirement system. Any member who on the termination date is a member of this retirement system may make an irrevocable election to retain membership in this retirement system by notifying the board of trustees in writing not later than 60 days following the termination date. Any person who so elects to remain a member of this retirement system shall not be eligible to participate in any tax qualified retirement plan offered by such corporation.

(3) If the corporation participates in the Section 401(k) plan, it shall not be authorized to maintain for its officers and employees any tax qualified retirement plan other than the plan qualified under Section 457 of the federal Internal Revenue Code on July 1, 1998.

(4) The corporation's participation in either the Section 401(k) plan or any tax qualified retirement plan maintained by the corporation shall be subject to the following conditions:

(A) The maximum percentage of a participant's annual salary which the corporation may pay into the plan for or on behalf of the participant shall not exceed 7 1/2 percent; and

(B) Each participant shall have a vested interest in employer contributions in accordance with the schedule in the subaccount of the Section 401(k) plan providing for employer contributions which is in existence on July 1, 1998, as now or hereafter amended. (Code 1981,

§ 47-2-70.1, enacted by Ga. L. 1992, p. 2176, § 1; Ga. L. 1998, p. 773, § 1; Ga. L. 2009, p. 947, § 15/HB 202.)

The 2009 amendment, effective May 11, 2009, added the proviso at the end of paragraph (a)(1).

47-2-71. Membership in Employees' Social Security Coverage Group.

(a) Any other provisions of law to the contrary notwithstanding, and pursuant to Article VII, Section III, Paragraph I and Article III, Section X of the Constitution of Georgia and Chapter 18 of this title, there is established as of July 1, 1956, Division A of the Employees' Retirement System of Georgia as a separate coverage group to be specifically known as the "Employees' Social Security Coverage Group."

(b) Any person who joins the retirement system as a contributing member on or after the execution date of the contract extending social security coverage shall become a member of Division A.

(c) The retirement allowance of any member of Division A who retires under this chapter and accepts employment from any state department or any agency which is supported in whole or in part by state funds, regardless of the source of such funds, shall be suspended during such time of his or her employment. If he or she is employed in a department subject to this chapter, he or she shall again become a member of Division A but shall contribute only the required social security tax. Upon separation of such member from state employment for any cause, all rights shall be vested in such member the same as if he or she had continued under his or her option to retire.

(d) Any other provisions of law to the contrary notwithstanding, any required employee tax for social security coverage not otherwise retained by employer fiscal officers shall be deducted from each Division A member's individual annuity savings account by the retirement system for payment of such required tax. If the member's annuity savings account is insufficient to cover the required amount of employee tax, it shall be the duty of the fiscal officer of his or her employer to deduct from the current salary of the member such amounts as are necessary for payment of the employee tax. For those members of Division A covered for social security, it shall be the duty of the fiscal officers of the various employers to retain from each of the 5 1/2 percent employee-7 1/2 percent employer contributions for retirement system purposes, 2 percent of the member's first \$4,200.00 annual wages, such amount to apply toward the employee-employer tax required under the Social Security Act. Any additional rate of employee-employer tax for social security shall result in a corresponding increase in the amount of tax payable by the employee and employer. All employee-employer taxes required under the Social Security Act after December 31, 1956, shall be

retained by the fiscal officers of the various employers and reported to the board of trustees in accordance with rules and regulations established by the board of trustees. In order to facilitate the making of deductions and to simplify the reporting thereof for those members of Division A covered for social security, the board of trustees shall adopt such tables of employer and employee contributions as will result in uniform monthly contributions to the retirement system throughout the year. Such tables as adopted by the board of trustees shall not be placed in effect prior to January 1, 1963.

(e) Any member of Division A who has reached age 65 may, upon written application to and approval by the board of trustees, discontinue contributions which provide retirement benefits under this chapter. However, the employee tax provided under the Social Security Act shall be paid by the member. (Ga. L. 1956, p. 54, § 6; Ga. L. 1957, p. 283, §§ 8, 9; Ga. L. 1959, p. 107, § 7; Ga. L. 1962, p. 54, §§ 1, 2; Ga. L. 1967, p. 751, § 9; Ga. L. 1973, p. 706, § 1; Ga. L. 1983, p. 3, § 63; Ga. L. 2010, p. 1207, § 8/SB 436.)

The 2010 amendment, effective July 1, 2010, rewrote this Code section.

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

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Subsection (c) of O.C.G.A. § 47-2-71 was not intended to prevent retiree from obtaining service credits or benefits which the retiree was rightfully entitled to prior to retirement, but which the retiree never received while still a contributing member. 1981 Op. Att'y Gen. No. 81-28.

Withdrawal of contribution does not divest service to be credited. — First sentence

of subsection (c) of O.C.G.A. § 47-2-71 does not mean that retirement or withdrawal of contributions divests a person of the right to be credited with service which was authorized by law during the period of time the person was an active, contributing member of the Employees' Retirement System. 1981 Op. Att'y Gen. No. 81-28.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182.

ALR. — Industrial homeworkers as within social security, unemployment compensa-

tion, fair labor standards or workmen's compensation Act, 143 ALR 418.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan, 50 ALR3d 880.

47-2-72. Procedure for electing not to become a member.

Any other provision of this article to the contrary notwithstanding, any person who first becomes an employee of an employer at age 60 or later may elect not to become a member of this retirement system. Such election shall be made in writing to the board within 30 days of first becoming an employee of an employer; otherwise, the person shall become a member of this retirement system. The election provided for in this subsection shall be irrevocable. (Code 1981, § 47-2-72, enacted by Ga. L. 1998, p. 171, § 1; Ga. L. 2010, p. 1207, § 9/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted the former subsection (a) designation and deleted former subsection (b), which read: "Any active member of this retirement system on July 1, 1998, who was age 60 or older when he or she first became a member of this retirement system may elect to withdraw his or her membership and receive the total of his or her employee contributions with regular interest thereon. Such election shall be made in writing to the board not later than August 1, 1998; otherwise, the member shall remain a member of this retirement system. The election provided for in this subsection shall be irrevocable."

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly,

provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-73. Election of retirement system by members of Georgia Judicial Retirement System; effect of subsequent legislation.

- (a)(1) Any provision of this chapter or Chapter 23 of this title to the contrary notwithstanding, any member of the Georgia Judicial Retirement System who is vested for a normal retirement benefit and who without a break in service becomes the head of a state department or agency or who is appointed by the Governor to a full-time salaried position on a state board or commission may make a one time irrevocable election to remain a member of the Georgia Judicial Retirement System or to become a member of this retirement system.
- (2) If a person subject to this subsection elects to remain a member of the Georgia Judicial Retirement System, the employer and employee shall make all contributions to such retirement system and perform such other acts as are required by law or regulation.
- (3) This subsection shall be applicable to each person who was a member of the Georgia Judicial Retirement System on July 1, 2000, and to any person who becomes a member after that date. Any person eligible

to make the election provided for in this subsection shall do so in writing to the board of trustees of this retirement system and the Board of Trustees of the Georgia Judicial Retirement System not later than September 30, 2000, or within 60 days after the date he or she became subject to this Code section. Once made, the election is irrevocable.

(4) Any person subject to this subsection who elects to become a member of this retirement system may have accumulated contributions under the Georgia Judicial Retirement System transferred to this retirement system. The Board of Trustees of the Georgia Judicial Retirement System shall pay to the board of trustees of this retirement system all employer and employee contributions made by or on behalf of the member, together with regular interest. The member shall be granted only so much creditable service as such amount will warrant without creating any accrued actuarial unfunded liability as to this retirement system; provided, however, that such service credits shall not be used in determining the qualifications of a member for benefits other than vested rights or disability, death, or normal service retirement allowances.

(b) The provisions of this Code section shall not become a part of the employment contract and shall be subject to subsequent legislation; provided, however, that no person who has made the election provided by this Code section shall be affected by any subsequent legislation. (Code 1981, § 47-2-73, enacted by Ga. L. 2000, p. 1693, § 1.)

ARTICLE 5

SERVICE CREDITABLE TOWARD RETIREMENT BENEFITS

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Editor's notes. — In light of the similarity of the provisions, decisions under Ga. L. 1948, p. 138, § 4, as amended, are included in the annotations for this article.

When retirement benefits become vested. — Retirement rights become vested in the claimant immediately upon any participation in active service while the civil service provisions are in effect, irrespective of whether at the time in question the claimant has completed sufficient length of service to be eligible for retirement as a matter of right; such rights cannot be constitutionally divested by any subsequent Act of the General Assembly. 1971 Op. Att'y Gen. No. 71-5 (decided under Ga. L. 1949, p. 138, § 4).

Retirement credit authorized to county tax officials for forfeited leave, and the

rules and regulations of the board of trustees adopted thereunder must be followed as to the manner and method in which this forfeited leave is documented and certified as to any tax officials and employees not covered by a county merit system or other established leave practice or policy. 1979 Op. Att'y Gen. No. 79-69 (decided under Ga. L. 1949, p. 138, § 4).

Forfeited leave may be used as creditable service for computing beneficiary's death allowances in the event of the death in service of a constitutional officer, or any other eligible member of the retirement system, so long as all other requirements for death allowances are met. 1979 Op. Att'y Gen. No. 79-34 (decided under Ga. L. 1949, p. 138, § 4).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 81A C.J.S., States, § 216.

ALR. — Statute or ordinance providing pension for public officers or employees as available to one who had left service before the passage of the statute, 142 ALR 938.

Disciplinary suspension of public em-

ployee as affecting computation of length of service for retirement or pension purposes, 6 ALR2d 506.

Constitutionality, construction, and application of statute or ordinance providing for reduction of pension or retirement benefit of public officer or employee because of independent income, 7 ALR2d 692.

47-2-90. Rules and regulations with regard to credit for service; credit for service in the Georgia National Guard, Georgia State Guard, and General Assembly.

(a) The board of trustees shall establish rules and regulations setting forth the amount of service in a year which is equivalent to one year of creditable service.

(b) In no case shall more than one year of service be creditable for all service in one calendar year.

(c) One year of creditable service shall be given for each year of service in the Georgia National Guard, Georgia State Guard, or the General Assembly, provided that no credit shall be given for such service unless the individual was a member of the retirement system at that time; provided, further, that no more than five years of creditable service may be so obtained. (Ga. L. 1949, p. 138, § 4; Ga. L. 1951, p. 394, § 5; Ga. L. 1952, p. 175, § 3; Ga. L. 2010, p. 1207, § 10/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted “, provided that creditable service performed as a member of the General Assembly shall be in addition to all other service” following “year” at the end of subsection (b).

Cross references. — Effect of transfer to state retired list for members of organized militia, § 38-2-9. Creditable service not allowed for military service from which discharge was other than honorable, § 47-1-11.

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in

Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-2-91. Credit for accumulations of forfeited annual and sick leave.

(a) As used in this Code section, the term:

(1) “Classified member” means a member of the retirement system who is in the classified service of the State Personnel Administration provided for by Chapter 20 of Title 45.

(2) “Commissioner” means the commissioner of personnel administration provided for in Code Section 45-20-4.

(3) “Compensatory time” means time off from work which is used in lieu of annual or sick leave to offset overtime service rendered by an employee when the employee is compensated by a fixed salary and is not financially compensated for such overtime service.

(4) “Elected state official” means the Governor, Lieutenant Governor, each member of the Public Service Commission, the Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Labor, Commissioner of Agriculture, each Justice of the Supreme Court, and each Judge of the Court of Appeals.

(5) “Unclassified member” means any member of the retirement system who is in the unclassified service of the State Personnel Administration provided for by Chapter 20 of Title 45 or who is otherwise not covered by the rules and regulations of the State Personnel Board, including elected state officials.

(b)(1) Accumulated days of forfeited annual and sick leave for which a member has not been paid shall constitute creditable service if such member has at least six months of such forfeited leave at the time of the member’s retirement. The member shall be given one month of creditable service for each 20 days of forfeited annual and sick leave. Upon retirement of a classified member, the employer shall certify to the board of trustees the total amount of that member’s forfeited annual and sick leave based on leave records for periods of service where employers have maintained adequate leave records. For periods of service where no leave records are available for classified members, forfeited leave for an undocumented period may be computed as provided in subsection (i) of this Code section. The determination of accumulated days of forfeited annual and sick leave for unclassified members shall be based on leave records for periods of service where employers have maintained adequate leave records. For periods of service where no leave records are available, forfeited leave for unclassified employees shall be computed as follows:

(A) When 15 years or more of leave records are available for an unclassified member, the determination of forfeited leave for undocumented periods shall be computed as provided in subsection (i) of this Code section; or

(B) When less than 15 years of leave records are available for an unclassified member, the determination of forfeited leave for undocumented periods shall be based on the one-year average amount of

forfeited annual and sick leave calculated by the commissioner pursuant to subsection (f) of this Code section and as provided in subsection (g) of this Code section, subject to the limitation in subsection (j) of this Code section.

(2) For both classified and unclassified members, each employer shall contribute the same amount as would have been contributed by the employer had the member obtaining creditable service for forfeited annual and sick leave remained in state employment without change in compensation for a period of time equal to the amount of forfeited annual and sick leave for which creditable service is obtained.

(c) For unclassified members, the maximum number of days of annual and sick leave which may be accumulated in one year shall be in accordance with the rules and regulations of the State Personnel Board governing employees in classified service, as defined in paragraph (2) of Code Section 45-20-2.

(d) For the purposes of this Code section, compensatory time shall not be applicable to elected state officials and no elected state official may offset any annual or sick leave taken by any such official by any compensatory time which might otherwise be applicable to such official.

(e) When accumulated forfeited annual and sick leave is claimed for the purposes of this Code section by an elected state official based on records maintained by or pursuant to the order or supervision of the elected state official, any such accumulated annual and sick leave accepted by the board of trustees shall, in addition to such records, be based on the elected state official's sworn statement that the amount of accumulated forfeited annual and sick leave claimed by the elected state official is true and correct.

(f) The commissioner shall select a random representative sample of employees who, as of June 30, 1985, have ten years or more of continuous service in the classified service of the State Personnel Administration. From an examination of the personnel records of the members in the sample, the commissioner shall calculate an annual average of the number of days of annual leave taken and an annual average of the number of days of sick leave taken by the members in the sample. The average days for annual leave taken and the average days for sick leave taken shall then each be deducted, respectively, from the maximum number of days of annual leave and the maximum number of days of sick leave which may be accumulated in one year under rules and regulations of the State Personnel Board by an employee in the classified service of the State Personnel Administration. The two figures resulting after making such reductions shall be added together and the resulting figure shall be forfeited annual and sick leave for each year of membership service for the purposes of subsection (g) of this Code section, subject to the limitation in subsection (j) of this Code section.

(g) The average amount of forfeited annual and sick leave calculated by the commissioner pursuant to subsection (f) of this Code section shall be

supplied by that officer to all employers. When less than 15 years of leave records are available, the determination of forfeited annual and sick leave for unclassified employees with undocumented periods may be certified by the employer based on the average amount of forfeited annual and sick leave supplied by the commissioner. The amount which may be so certified shall be calculated by multiplying the figure representing the one-year average of forfeited annual and sick leave by the number of years of membership service for which leave records were not available at the time of retirement, subject to the limitation in subsection (j) of this Code section.

(h) For any member whose membership service includes service as both a classified and unclassified member, both classified and unclassified service may be considered in qualifying for undocumented forfeited annual and sick leave calculations based on 15 or more years where employers have maintained adequate records of annual and sick leave taken by members. When 15 or more years of leave records are available through a combination of both classified and unclassified service, forfeited annual and sick leave for an undocumented period may be computed as provided in subsection (i) of this Code section. When less than 15 years of leave records are available through a combination of both classified and unclassified service for a member, then the undocumented forfeited leave for the unclassified service shall be calculated pursuant to subsection (g) of this Code section and undocumented forfeited leave for classified service shall be calculated pursuant to subsection (i) of this Code section, subject to the limitation in subsection (j) of this Code section. The two calculations shall then be added together to determine the total amount of forfeited leave for the undocumented period.

(i) The formula provided by this subsection may be utilized for computation of forfeited annual and sick leave during the undocumented periods of service described in paragraph (1) of subsection (b) and subparagraph (b)(1)(A) of this Code section. The formula is as follows:

(1) Compute the maximum earnable sick and annual leave for the undocumented period;

(2) Compute the total sick and annual leave taken for all periods in which documentation is available;

(3) Compute the average sick and annual leave taken per month by dividing the answer under paragraph (2) of this subsection by the total number of documented months;

(4) Multiply the answer under paragraph (3) of this subsection by the total number of months in the undocumented period; and

(5) Subtract the answer under paragraph (4) of this subsection from the answer under paragraph (1) of this subsection to determine total leave earned and not taken during the undocumented period.

(j) For unclassified employees who have less than 15 years of leave records available, the determination of forfeited annual and sick leave shall be limited to the lesser of the amount calculated pursuant to subsections (f) and (g) of this Code section or the average of actual forfeited annual and sick leave for which leave records are available, whichever is less.

(k) The board of trustees may adopt rules and regulations, not inconsistent with the provisions of this Code section, to aid in administering and carrying out the provisions of this Code section. (Ga. L. 1974, p. 1451, § 1; Ga. L. 1976, p. 393, § 1; Ga. L. 1979, p. 1022, § 1; Ga. L. 1985, p. 1624, § 2; Ga. L. 1993, p. 86, § 1; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" in paragraphs (a)(1), (a)(5) and in the first sentence of subsection (f).

The 2010 amendment, effective July 1, 2010, substituted "the State Personnel Administration" for "the state merit system" at the end of the third sentence of subsection (f).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

JUDICIAL DECISIONS

Accumulated forfeited leave constitutes creditable retirement service. — The Georgia Constitution does not prohibit the award to elected judicial officers of creditable ser-

vice for retirement purposes based upon accrued but unused annual leave and sick leave. *Arneson v. Board of Trustees*, 257 Ga. 579, 361 S.E.2d 805 (1987).

OPINIONS OF THE ATTORNEY GENERAL

Section applicable to state employee members after 1974. — Statute is applicable only to those persons who are both employed by the state and members of the retirement system on or after the statute's effective date. 1974 Op. Att'y Gen. No. 74-79 (see O.C.G.A. § 47-2-91).

Department of Revenue's power as to county tax officials. — Department of Revenue does not have the authority to promul-

gate rules and regulations limiting the accumulation and use of sick, annual, and compensatory leave for county tax officials and employees. 1982 Op. Att'y Gen. No. 82-98.

As the employer for the purposes of retirement system membership, the Department of Revenue may specify the manner in which the certification and documentation for forfeited leave of county tax officials and em-

ployees is made. 1982 Op. Att'y Gen. No. 82-98.

Accumulated forfeited leave constitutes creditable retirement service. — Accumulated days of forfeited sick and annual leave of a member of the retirement system which were earned in state service and for which the employee is not otherwise entitled to be paid constitute creditable retirement service, notwithstanding the fact that some of the leave was forfeited prior to the employee's retirement. 1976 Op. Att'y Gen. No. 76-7.

Under O.C.G.A. § 47-2-91, constitutional officers and officials under the Compensation Act can accrue annual and sick leave for the purpose of gaining creditable service toward retirement for any unused, forfeited leave. 1982 Op. Att'y Gen. No. 82-96.

When commissioner of natural resources resigned to become Commissioner of Labor, the commissioner was entitled to collect terminal annual leave from the Department of Natural Resources, and all other accrued leave the commissioner was not eligible to collect as terminal leave should have been transferred to the Department of Labor as forfeited leave, to be added to the commis-

sioner's leave accrued solely for retirement purposes as Commissioner of Labor. 1985 Op. Att'y Gen. No. 85-59.

Responsibility for contribution for forfeited leave. — When a member of the Employees' Retirement System of Georgia retires and is entitled to creditable service for forfeited leave, the member's last covered employer is responsible for making the employer's contribution for the forfeited leave, regardless of where the employee worked when the leave was forfeited. 1991 Op. Att'y Gen. No. 91-30.

Statutory formula used in absence of leave records. — In the absence of leave records maintained by the employer on classified employees, an employing agency must use the formula set forth in subsection (i) of O.C.G.A. § 47-2-91 for certifying the amount of forfeited leave available to the employee for retirement purposes. 1987 Op. Att'y Gen. No. 87-12.

Transferability of forfeited leave. — Forfeited leave cannot be established as creditable service under the provisions of O.C.G.A. § 47-2-91 prior to retirement and therefore, it is not transferable to the Teachers Retirement System pursuant to O.C.G.A. § 47-3-81. 1985 Op. Att'y Gen. No. 85-8.

47-2-92. Reestablishment of service credit after withdrawal of accumulated contributions from this retirement system or the Teachers Retirement System of Georgia; payments required to obtain credit.

Any present member who has withdrawn accumulated contributions from either the Employees' Retirement System of Georgia or the Teachers Retirement System of Georgia, or both, may, after two years of service as a contributing member, reestablish the creditable service for which the member would have been eligible if the accumulated contributions had not been withdrawn, provided that the member repays into the retirement system an amount equal to the amount withdrawn, together with regular interest at the rate of 4 1/4 percent per annum from the date of withdrawal to the date of repayment, which contributions and interest shall be placed in the participant's individual account in the annuity savings fund. Upon receipt of notice from this retirement system to the Teachers Retirement System of Georgia that a member has repaid to this retirement system contributions previously withdrawn from the Teachers Retirement System of Georgia, the Teachers Retirement System of Georgia shall pay an employer contribution plus regular interest into the Employees' Retirement System of Georgia. The amount of the employer contribution shall be 6 percent of the reported compensation of the member during membership in the Teachers Retirement System of Georgia. (Ga. L. 1962, p. 126, § 1; Ga.

L. 1963, p. 547, § 1; Ga. L. 1968, p. 1407, § 1; Ga. L. 1973, p. 900, § 1; Ga. L. 1976, p. 453, § 2; Ga. L. 1980, p. 1544, § 1; Ga. L. 1992, p. 1110, § 1; Ga. L. 2009, p. 947, § 16/HB 202.)

The 2009 amendment, effective May 11, 2009, near the end of the first sentence, inserted “contributions and” and substituted “participant’s individual account in the annuity savings fund” for “pension accumulation fund”.

47-2-93. Credit for service rendered after December 31, 1953, by persons who were not members at the time; payments required to obtain credit.

Any other provisions of this law to the contrary notwithstanding, any member of this retirement system who received compensation from the state for services rendered by him after December 31, 1953, but who did not become a member until a later date, may receive credit for any service rendered after December 31, 1953, and before the date he became a member of this retirement system by paying the employee contributions that would have been paid by him if he had been a member during that time. No such credit shall be given except for full-time state employment. The board of trustees is authorized to promulgate rules and regulations necessary to carry out this Code section. (Ga. L. 1971, p. 93, § 1; Ga. L. 1971, p. 96, § 2.)

JUDICIAL DECISIONS

Cited in Employees’ Retirement Sys. v. Baughman, 241 Ga. 339, 245 S.E.2d 282 (1978); Employees’ Ret. Sys. v. Martin, 272 Ga. 535, 533 S.E.2d 68 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Previously obtained credit entitled to be used. — Member of the retirement system who previously obtained prior service credit under Ga. L. 1971, p. 93, § 1 and Ga. L. 1971, p. 96, § 2 (see O.C.G.A. § 47-2-93) was entitled to use that credit for all the purposes which were authorized by the retirement provisions when those provisions were approved, notwithstanding the fact that Ga. L. 1971, p. 96, § 2 (see former O.C.G.A. § 47-2-97) attempted to restrict the provisions of the earlier law. 1972 Op. Att’y Gen. No. 72-122.

Authorization to receive credit for services rendered before becoming member. — O.C.G.A. § 47-2-93 authorizes a member of the Employees’ Retirement System who received compensation from the State of Georgia for services rendered after December 31,

1953, but who did not become a member until a later date, to receive credit for such service by paying the employee contributions that would have been paid by the employee if the employee had been a member during such service. Any service on the superior court bench after December 31, 1953, may be purchased and established within the Employees’ Retirement System. 1981 Op. Att’y Gen. No. 81-22.

Legislative service is not considered full-time state employment within the meaning of O.C.G.A. § 47-2-93. Op. Att’y Gen. No. 81-22.

Credit for former service as narcotics agent. — Employees of the Georgia Bureau of Investigation, who are members of the Employees Retirement System, may purchase prior service credit under O.C.G.A.

§ 47-2-93 for former service as a narcotics agent pursuant to O.C.G.A. § 35-3-9. 1992 Op. Att'y Gen. No. 92-17.

47-2-94. Service credit provided for persons whose membership was terminated for failure to render at least one year of service in a five-year period.

Any current member whose membership has previously been terminated because that member rendered less than one year of service in a period of five consecutive years and who has never withdrawn the contributions he or she made during such previous membership shall receive credit, after one year of active service as a contributing member, for the creditable service accumulated under the previous membership. (Ga. L. 1965, p. 106, § 1; Ga. L. 1976, p. 453, § 3; Ga. L. 1996, p. 378, § 1.)

47-2-95. Credit for service during World War I, World War II, or the Korean Conflict; credit for service in the Georgia National Guard or the Georgia State Guard.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 11, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1956, p. 54, § 5.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any

person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-96. Prior service credit; payments required to obtain credit.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 12, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1949, p. 138, § 4; Ga. L. 1953, Nov.-Dec. Sess., p. 160, § 3; Ga. L. 1956, p. 54, § 4; Ga. L. 1957, p. 283, § 3; Ga. L. 1959, p. 107, § 3; Ga. L. 1960, p. 1020, § 1; Ga. L. 1960, p. 1115, § 1; Ga. L. 1961, p. 143, § 3; Ga. L. 1964, p. 158, § 1; Ga. L. 1964, p. 237, § 1; Ga. L. 1967, p. 751, § 2; Ga. L. 1969, p. 1015, § 2; Ga. L. 1971, p. 93, § 2; Ga. L. 1972, p. 360, §§ 1, 2; Ga. L. 1981, p. 1447, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 1856, § 1; Ga. L. 1986, p. 1233, § 2; Ga. L. 1990, p. 521, § 1; Ga. L. 1994, p. 337,

§ 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2000, p. 1506, § 1; Ga. L. 2002, p. 1246, § 2.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of

each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise cov-

ered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-96.1. Creditable service for temporary full-time employment by legislative branch.

Repealed by Ga. L. 2010, p. 1207, § 13, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 47-2-96.1, enacted by Ga. L. 1996, p. 730, § 1; Ga. L. 1998, p. 1111, § 1; Ga. L. 2006, p. 429, §§ 1, 2/HB 644.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-96.2. Creditable service for uncredited full-time service with executive branch.

Repealed by Ga. L. 2010, p. 1207, § 14, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 47-2-96.2, enacted by Ga. L. 1998, p. 174, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-97. Applicability of creditable service under Code Section 47-2-93 or subsection (b) of Code Section 47-2-96 toward involuntary separation benefits; requirement as to full-time employment for credit.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 15, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1971, p. 96, § 2; Ga. L. 1976, p. 456, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 86, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain

stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized

and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any

such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-2-98. Creditable service for member who was officer or employee of Georgia Housing and Finance Authority.

(a) As used in this Code section, the term:

(1) “Authority” means the Georgia Housing and Finance Authority established by Chapter 26 of Title 50.

(2) “Proof of prior employment” means pay records, income tax withholding records, or other records of the authority which are sufficient to establish to the satisfaction of the board of trustees the prior employment record of an officer or employee of the authority.

(b)(1) Any member of this retirement system who became a member on or after July 1, 1995, and who, immediately prior to becoming a member, was an officer or employee of the authority shall, upon furnishing proof of prior employment to the board of trustees and subject to the provisions of paragraph (2) of this subsection, be eligible to receive creditable service under this retirement system for such prior service.

(2) A member subject to this Code section shall have the option to transfer all or a portion of his or her vested interest in the pension plan maintained by the authority prior to the date he or she became a member of this retirement system to satisfy all or a portion of the cost to receive creditable service allowed pursuant to paragraph (1) of this subsection. Any funds transferred pursuant to such option shall be credited to the officer’s or employee’s annuity account established by the retirement system. The member shall be authorized, but not required, to supplement such amount so transferred. The member shall receive such creditable service as the combination of funds so transferred or paid would warrant without creating any additional accrued liability of the retirement system, up to the maximum amount of creditable service allowed by paragraph (1) of this subsection. (Code 1981, § 47-2-98, enacted by Ga. L. 1996, p. 391, § 1; Ga. L. 2005, p. 611, § 1/SB 161.)

47-2-99. Applicability of creditable service under Code Section 47-2-334 and Chapter 22 of this title; obtaining service and application for creditable service.

(a) Any member of the retirement system, including a member subject to the provisions of Code Section 47-2-334, who was, at any time prior to becoming a member, employed by an employer as a temporary full-time employee, may obtain up to 12 months of creditable service for such service as a temporary full-time employee under the conditions contained in this

Code section; provided, however, that no such credit shall be granted for any period which was covered under Chapter 22 of this title, relating to the Georgia Defined Contribution Plan.

(b) Any person desiring to obtain the creditable service authorized by subsection (a) of this Code section shall make application in such manner as the board of trustees deems proper; tender to the board of trustees such proof of the prior employment as the board shall deem necessary; and pay to the board of trustees the employer and employee contributions as would have been paid if the member had been a member at the time of performing such prior service, together with regular interest thereon compounded annually to the date of payment.

(c) Application for creditable service authorized by subsection (a) of this Code section must be received by the board of trustees not later than June 30, 2001, or 24 months after the member becomes a member of the retirement system, whichever date is later. (Code 1981, § 47-2-99, enacted by Ga. L. 2000, p. 1239, § 1.)

47-2-100. Additional creditable service.

(a) Any member of this retirement system may obtain up to an additional three years of creditable service as provided in this Code section. In order to obtain such additional creditable service, the member must:

(1) Make application to the board of trustees in such manner as the board deems appropriate. Such application and payment must be made in conjunction with and simultaneously with the member's application for retirement. If the application for retirement is withdrawn or denied, the application to purchase creditable service shall be void; and

(2) Pay to the board of trustees an amount determined by the board of trustees to be sufficient to cover the full actuarial cost of granting the creditable service as provided in this Code section.

(b) Upon receipt of an application for additional creditable service, the board of trustees shall certify to the applicant the amount of the payment required by paragraph (2) of subsection (a) of this Code section.

(c) No creditable service obtained pursuant to this Code section shall be used to calculate the amount of creditable service required to qualify for a benefit under subsection (a) of Code Section 47-2-110 or Code Section 47-2-122. (Code 1981, § 47-2-100, enacted by Ga. L. 2004, p. 574, § 1.)

ARTICLE 6

RETIREMENT AND ELIGIBILITY FOR A RETIREMENT ALLOWANCE

47-2-110. Retirement ages; application and eligibility for a retirement allowance; suspension of retirement allowance upon reemployment; health benefits.

(a)(1)(A) Upon written application to the board of trustees, any member in service who has reached 60 years of age or who has 30 years of creditable service may retire on a service retirement allowance, provided that he or she has at least five years of creditable service; provided, further, that if he or she became a member after July 1, 1968, he or she has at least ten years of creditable service. The effective date of retirement shall be the first of the month in which the application is received by the board of trustees, provided that no retirement application will, in any case, be effective earlier than the first of the month following the final month of the applicant's employment. Applications for retirement shall not be accepted more than 90 days in advance of the effective date of retirement. Separation from service pending approval of the retirement application shall not affect eligibility for a retirement allowance. The provisions of this subsection regarding the effective date of retirement shall apply to all persons making application for retirement on or after March 15, 1979, and to all persons who have made application prior to March 15, 1979, but to whom payments from the retirement system have not commenced as of that date. Each employer shall certify to the board of trustees the date on which the employee's employment is or will be severed.

(B) If the employee has not reached normal retirement age on the effective date of retirement, the employer shall certify that no agreement exists to allow the employee to return to service, including service as or for an independent contractor. Any return to employment or rendering of any paid service by such employee, including service as or for an independent contractor, for any employer within two consecutive calendar months of the effective date of retirement shall render the severance invalid, nullifying the application for retirement.

(2) Normal retirement age, for purposes of the retirement system, shall be the date the employee has reached 60 years of age, provided that he or she has at least ten years of creditable service or the age of an employee on the date he or she attains 30 years of creditable service; provided, however, that the provisions of this paragraph are subject to change by future legislation in order to comply with federal regulations. For those members who are in service with the Uniform Division of the Department of Public Safety as an officer, noncommissioned officer, or trooper, officers and agents of the Georgia Bureau of Investigation,

conservation rangers of the Department of Natural Resources, or in the Department of Revenue as an alcohol and tobacco officer or agent, normal retirement age shall be the date the employee has reached 55 years of age, provided that he or she has at least ten years of creditable service. For purposes of Section 402(l) of the federal Internal Revenue Code regarding distributions from governmental plans for health and long-term care insurance for public safety officers, normal retirement age shall be the earliest date when the employee has satisfied the requirements for a retirement allowance under the retirement system. Except as provided under Article 2 of Chapter 1 of this title, a member's right to his or her retirement allowance is nonforfeitable upon attainment of normal retirement age.

(b)(1) As used in this subsection, in addition to the definition provided in Code Section 47-2-1, the term "employer" shall also include the retired member's last employer which reported to the retirement system prior to the member's effective date of retirement. Such term shall also include the Board of Regents of the University System of Georgia.

(2) Except as provided in this subsection, if a member accepts paid employment with or renders services for pay to any employer, including, without limitation, service directly or indirectly as or for an independent contractor, after his or her retirement, payment of his or her retirement allowance shall be suspended and no contributions to the retirement system shall be made on account of such service either by that member or his or her employer, provided that, upon termination of such service, all rights shall vest in that member as if he or she had continued his or her option to retire.

(3) The retirement allowance of a retired member who accepts employment with or renders services to any employer after his or her retirement shall not be suspended if the employee has attained normal retirement age or has not been employed by or rendered service for any employer for at least two consecutive calendar months and performs no more than 1,040 hours of paid employment or paid service, including, without limitation, service as or for an independent contractor, for the employer in any calendar year; provided, however, that return to service as or for an independent contractor shall not result in the suspension of an employee's retirement allowance if the employing agency certifies to the board of trustees that:

(A) The contracting entity has multiple employees;

(B) The contracting entity has multiple contracts, and the contracts are not limited to employers, as such term is defined in Code Section 47-2-1; and

(C) The contractual relationship with the employer was not created to allow a retired employee to continue employment after retirement in a position similar to the one he or she held before retirement.

(4) Any employer that employs a retired plan member shall within 30 days of the employee's accepting employment notify the board of trustees in writing stating the name of the plan member and the number of hours the employee is expected to work annually and shall provide such other information as the board may request. If the retired plan member performs more than 1,040 hours in any calendar year, the employer shall so notify the board of trustees as soon as such information is available. Any employer that fails to notify the board of trustees as required by this subsection shall reimburse the retirement system for any benefits wrongfully paid. It shall be the duty of the retired plan member seeking employment by the employer to notify the employer of his or her retirement status prior to accepting such position. If a retired plan member fails to so notify the employer and the employer becomes liable to the retirement system, the plan member shall hold the employer harmless for all such liability.

(c) The board of trustees is authorized to provide by rule or regulation for the payment of benefits to members or beneficiaries of the retirement system at a time and under circumstances not provided for in this chapter to the extent that such payment is required to maintain the retirement system as a "qualified retirement plan" for the purposes of federal income tax laws. (Ga. L. 1949, p. 138, § 5; Ga. L. 1953, Jan.-Feb. Sess., p. 349, § 3; Ga. L. 1953, Nov.-Dec. Sess., p. 160, § 4; Ga. L. 1957, p. 172, § 1; Ga. L. 1957, p. 283, § 4; Ga. L. 1957, p. 465, § 1; Ga. L. 1962, p. 54, § 4; Ga. L. 1968, p. 1356, §§ 1, 2; Ga. L. 1969, p. 1015, § 1; Ga. L. 1971, p. 338, § 1; Ga. L. 1979, p. 416, § 1; Ga. L. 1984, p. 1487, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1992, p. 2178, § 1; Ga. L. 1997, p. 554, § 1; Ga. L. 2000, p. 1449, § 1; Ga. L. 2002, p. 1288, § 1; Ga. L. 2006, p. 1010, § 1/HB 1020; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2009, p. 947, § 17/HB 202; Ga. L. 2010, p. 424, §§ 1, 2/HB 916; Ga. L. 2010, p. 1207, § 16/SB 436.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" in paragraphs (c)(2) and (c)(3). The second 2009 amendment, effective May 11, 2009, in subsection (a), designated the existing provisions of subsection (a) as paragraph (a)(1), added the last two sentences in paragraph (a)(1), and added paragraph (a)(2); and rewrote subsection (c). See the Code Commission note regarding the effect of these amendments.

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, in paragraph (a)(1), designated the existing provisions as subparagraph (a)(1)(A), in subparagraph (a)(1)(A), substituted "shall" for

"will" in the third sentence and deleted "and that no agreement exists to allow the employee to return to service, including service as or for an independent contractor. Any return to employment or rendering of any paid service, including service as or for an independent contractor, for any employer within two consecutive calendar months of the effective date of retirement shall render the severance invalid, nullifying the application for retirement" following "severed" at the end, and added subparagraph (a)(1)(B); and, in paragraph (c)(3), added the proviso at the end and added subparagraphs (c)(3)(A) through (c)(3)(C). The second 2010 amendment, effective July 1, 2010, deleted former subsection (b), which read: "(b)(1) Effective July 1, 1983,

no member of the retirement system may be required to retire because of age except the following members:

“(A) Those employed as prison guards by the Department of Corrections;

“(B) Those employed by the Uniform Division of the Department of Public Safety as officers and troopers;

“(C) Those employed by the Department of Natural Resources as conservation rangers;

“(D) Those employed by the Department of Revenue as alcohol and tobacco officers or agents;

“(E) Those employed as officers or agents of the Georgia Bureau of Investigation;

“(F) Those employed by the Department of Transportation as enforcement officers prior to July 1, 2001;

“(G) Those employed by the Department of Motor Vehicle Safety as enforcement officers on or after July 1, 2001; and

“(H) Those employed by the State Board of Pardons and Paroles as parole officers as well as other employees of said board who possess the power of arrest.

“(2) Those members specified by paragraph (1) of this subsection who may be required to retire because of age shall be subject to the laws specifying retirement ages for the various classifications of such members or subject to the rules, regulations, or policies specifying retirement ages of the various state departments or agencies employing such members, provided such rules, regulations, or policies are in compliance with other laws of this state. Any state department or agency specified in paragraph (1) of this subsection shall be authorized to employ or continue the employment of any member, regardless of age, with professional, scientific, or technical skills who is so certified to

the board of trustees by the state department or agency.”; and redesignated former subsections (c) and (d) as present subsections (b) and (c), respectively.

Code Commission notes. — The amendment of this Code section by Ga. L. 2009, p. 752, § 1, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 947, § 17. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor's notes. — In amending subsection (b), the 1984 Act enacted Code language referring to an effective date of July 1, 1983, for the provisions of subsection (b), although the 1984 Act itself, by not carrying a specific effective date clause, was to become effective July 1, 1984. See 1976 Op. Att'y Gen. No. 76-76 for a finding that, if the substantive provisions of an amendment conflict with the effective date provisions of the Act effecting the amendment, the substantive provisions should be construed in a manner consistent with the effective date provisions of the Act.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

JUDICIAL DECISIONS

Reduction in amount of pension for persons retiring before July 1, 1998 proper. — Pensions for employees who retired on or before July 1, 1998, after reaching age 60, but with less than 30 years of creditable service, were properly reduced; even before 1998, the Board of Trustees of the Employees Retirement System of the State of Georgia possessed the discretionary authority to

reduce pensions based on age for retirees less than 65 with less than 30 years of creditable service. *Alverson v. Employees' Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

O.C.G.A. § 47-2-110(a) establishes the minimum age a state employee must reach, or the minimum number of years of service a state employee must accrue, before being

eligible to retire on what is referred to as a "service retirement allowance"; O.C.G.A. § 47-2-110(a) does not, however, establish or guarantee the amount of the retirement allowance or provide a method for its calculation. *Alverson v. Employees' Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

Neither O.C.G.A. § 47-2-120(a) nor O.C.G.A. § 47-2-110(a) provides a formula

for the calculation of service retirement benefits; the authority to do so rests with the Board of Trustees of the Employees Retirement System of the State of Georgia (ERS) under the general grant of authority in O.C.G.A. § 47-2-21 et al. to effectuate the provisions of the ERS Act. *Alverson v. Employees' Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

OPINIONS OF THE ATTORNEY GENERAL

State School Superintendent may recommend retirement of vocational education director. — State School Superintendent, as chief executive officer and as the department head of the Division of Vocational Education, may legally recommend to the board of trustees the retirement of the director of the Division of Vocational Education. 1960-61 Op. Att'y Gen. p. 175 (rendered under Ga. L. 1953, Nov.-Dec. Sess., p. 401).

Employee is not automatically separated from employment at age 65; however, an employee's continued employment is subject to the wishes of the department head where the employee is employed, until age 70; an employee who reaches the age of 70 is automatically retired, unless the employee's department head has certified to the board of trustees that the employee possesses professional, scientific, or technical skills and the employee's continued employment is desired. 1967 Op. Att'y Gen. No. 67-424.

Most state employees cannot be involuntarily retired based on an age earlier than 70 years. 1978 Op. Att'y Gen. No. 78-46.

Retired employee working as independent contractor may receive involuntary separation benefits. — Retired employee should continue to receive involuntary separation benefits though working for the state as an independent contractor. 1969 Op. Att'y Gen. No. 69-66.

Reemployment restriction aimed at state departments and agencies. — Legislature did not intend that the restrictions of this statute should extend to employment by a county or city police force, nor does the statute apply to employment as a deputy by a sheriff who is compensated entirely by the

fee system; the restriction was aimed at state departments and state agencies, or quasi-state agencies, which are supported by moneys contributed by or through the state. 1963-65 Op. Att'y Gen. p. 181 (see O.C.G.A. § 47-2-110).

Retirement benefits when elected to full-time paid county office. — Retirement benefits are not suspended if regular retiree is elected to full-time paid county office. 1972 Op. Att'y Gen. No. 72-56.

Retirement benefits when employed by Board of Regents. — O.C.G.A. § 47-2-110 applies to a retired state employee who subsequently becomes employed by the Board of Regents in a position in the University System of Georgia. 1981 Op. Att'y Gen. No. 81-13.

Retirement benefits when employed by local school board. — Teachers and other school personnel employed by local units of administration are not employed by nor do they render services for a state department or agency within the meaning of Ga. L. 1949, p. 138. Thus, employees of the Department of Education who retire under the Employees' Retirement System of Georgia may accept employment by a local school board without incurring a suspension of retirement benefits. 1980 Op. Att'y Gen. No. 80-117.

Retirement benefits when reemployed by personal corporation. — Reemployment limitation provisions of O.C.G.A. § 47-2-110 do not apply to an individual receiving retirement benefits from the Employees' Retirement System who is employed by a corporation transacting business with a covered state agency even though the individual is the sole stockholder of the corporation. 1983 Op. Att'y Gen. No. 83-45.

RESEARCH REFERENCES

ALR. — Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.

47-2-111. Persons eligible to retire at age 55.

Any other provision of this chapter to the contrary notwithstanding, any member employed by the Uniform Division of the Department of Public Safety as an officer, a noncommissioned officer, or a trooper; by the Georgia Bureau of Investigation as an officer or agent; by the Department of Natural Resources as a conservation ranger; or by the Department of Revenue as an alcohol and tobacco officer or agent or as an officer or agent of the Special Investigations Unit shall be eligible to retire at age 55 if he or she has the minimum number of years of creditable service provided in Code Section 47-2-110, and upon retirement such member shall be paid not less than the service retirement allowance which would have been payable to such member upon service retirement at age 65 without a change in compensation and with the same number of years' creditable service to which such member is entitled at the time of retirement. (Code 1981, § 47-2-111, enacted by Ga. L. 1993, p. 1372, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2010, p. 1207, § 17/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted former subsection (a), which read: "(a) Any other provision of law to the contrary notwithstanding, any member stated in subparagraphs (b)(1)(B) through (b)(1)(E) of Code Section 47-2-110 who is subject to the involuntary separation provisions of Code Section 47-2-123 and who retires upon or after attaining the age of 55, whether or not retirement at such age is required by law, shall upon application receive a retirement allowance which shall consist of:

"(1) In the case of a member with at least 20 years of service, the service retirement allowance which would have been payable upon service retirement at age 60 had the member continued in service to age 60 without further change in compensation;

"(2) In the case of a member with at least 25 years of service, 75 percent of the service retirement allowance which would have been payable upon service retirement at age 65 had the member continued in service without further change in compensation; or

"(3) In the case of a member with at least 30 years of service, the service retirement allowance which would have been payable

upon service retirement at age 65 had the member continued in service without further change in compensation.

"Any provisions of this chapter to the contrary notwithstanding, in the application of paragraphs (1) through (3) of this subsection relating to allowances other than for disability or death, projected retirement allowance computations shall be made on the basis of the member's highest total monthly earnable compensation, as reflected by monthly contributions made during the last 24 calendar months in which the member had made contributions, except that no salary increase by adjustment in compensation in any manner in excess of 10 percent during the last 12 months of membership service shall be included in the projected computation."; and deleted the former subsection (b) designation.

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any

way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation

of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

OPINIONS OF THE ATTORNEY GENERAL

Effect of section. — Agent of the Georgia Bureau of Investigation who is eligible for involuntary separation retirement benefits may elect retirement or to continue his or her employment past the age of 55 and be entitled to the same protection in age and service which would have been available when that agent was required to retire at age

55 by operation of law. 1993 Op. Att'y Gen. No. 93-12.

The 95% rule of O.C.G.A. § 47-2-124 does not apply to the calculation of retirement benefits under O.C.G.A. § 47-2-111. 1993 Op. Att'y Gen. No. 93-12 (issued prior to the 1994 amendment to § 47-2-124).

ARTICLE 7

RETIREMENT ALLOWANCES, DISABILITY BENEFITS, SPOUSES' BENEFITS

JUDICIAL DECISIONS

Cited in *State v. Cantrell*, 231 Ga. 704, 203 S.E.2d 493 (1974); *Cantrell v. Board of Trustees of Employees' Retirement Sys.*, 135 Ga.

App. 445, 218 S.E.2d 97 (1975); *Employees' Retirement Sys. v. Almgren*, 235 Ga. 368, 219 S.E.2d 749 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Legislative service creditable for determining involuntary separation benefits' eligibility. — Service as a member of the General Assembly subsequent to January 1, 1954, which has been paid for as membership service in the Georgia Legislative Retirement System, and which has been transferred from the Legislative Retirement System to the Employees' Retirement System of Georgia, is creditable as membership service for the purpose of determining eligibility for the involuntary separation benefits provided by Ga. L. 1949, p. 138, § 5. 1973 Op. Att'y Gen. No. U73-17.

For effect upon continuation of disability

retirement benefits when elected to full-time paid county office, see 1972 Op. Att'y Gen. No. 72-56 (rendered under Ga. L. 1949, p. 138, § 5).

Attempt to change beneficiary for retirement benefit by will considered "mistake." — An attempt by a member of the retirement system to change her beneficiary for the member's life insurance payment and the member's monthly retirement benefit by will is of no legal effect and should be considered a "mistake" in the construction of that provision of the will. 1974 Op. Att'y Gen. No. 74-92.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, Pensions and Retirement Funds, §§ 1174, 1183, 1187 et seq., 1207, 1209, 1211, 1214, 1222, 1226, 1252.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 314 et seq. 81A C.J.S., States, § 212 et seq.

ALR. — Constitutionality, construction,

and application of statute or ordinance providing for reduction of pension or retirement benefit of public officer or employee because of independent income, 7 ALR2d 692.

Misconduct as affecting right to pension

or retention of position in retirement system, 76 ALR2d 566.

Acceptance of, or assertion of right to, pension or retirement as abandonment of public office or employment, 76 ALR2d 1312.

47-2-120. Retirement allowances.

(a) Upon service retirement, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement; and

(2) A pension equal to the annuity allowable at age of retirement, but not to exceed an annuity which would have been allowed at age 65, which pension shall be computed on the basis of his or her contributions made prior to attaining age 65, provided that any member may continue his or her contributions after attaining 65 years of age, and by so doing shall receive membership service credit for such period of time, which shall be used in the computation of retirement allowances.

(b) No person who at any time elected nonmembership shall establish, nor shall any person who transferred to the retirement system or who previously became a member shall increase, the pension set forth in paragraph (3) of subsection (a) of this Code section by reason of his employment in or transfer to another employer. No member shall be eligible for that pension unless at least 30 days of his prior service was earned within an 18 month period immediately preceding his date of membership.

(c) Anything in this chapter to the contrary notwithstanding, any member with 30 years of service, regardless of age, shall be eligible to retire forthwith and, upon retirement, shall be paid not less than the service retirement allowance which would have been payable to such member upon service retirement at age 65 with 30 years of service.

(d) Anything in this chapter to the contrary notwithstanding, any member whose current membership began prior to July 1, 1982, and who has at least 34 years of service shall be eligible to retire forthwith and upon retirement shall be paid not less than the service retirement allowance which would have been payable upon service retirement at the age of 65 had the member continued in service without further change in compensation.

(e) In the case of any member who has at least 25 but less than 30 years of creditable service and who has not reached the age of 60 years upon retirement, the service allowance set forth in subsection (a) of this Code section shall be reduced by an actuarial equivalent certified by the board of

trustees. Such reduced amount shall take into consideration the member's age and number of years of creditable service at the time of retirement and shall be sufficient to permit retirement at such age or with such number of years of creditable service without creating any accrued liability against the retirement system. Such reduction shall not apply in calculating the service allowance for disability retirement or death. Any member who retires with less than 30 years of creditable service or who has not obtained the age of 60 at the time of retirement shall not become eligible for postretirement benefit adjustments until such time as the member reaches the age of 60 or would have obtained 30 years of creditable service, whichever occurs earlier.

(f) The board of trustees shall cause the actuary for the retirement system to calculate the actuarial cost to the retirement system of any salary increase granted to a member in excess of 5 percent over the 12 months immediately prior to such member's retirement date and shall notify the employing unit of such amount. Such notice shall be sent not later than 60 days following such member's retirement date. The employing unit shall pay such amount, together with the cost of such actuarial calculation, as a supplemental employer contribution to the board of trustees not later than the last day of the month following receipt of such notice. (Ga. L. 1949, p. 138, § 5; Ga. L. 1953, Jan.-Feb. Sess., p. 349, § 4; Ga. L. 1953, Nov.-Dec. Sess., p. 160, § 4; Ga. L. 1957, p. 465, § 1; Ga. L. 1971, p. 92, § 1; Ga. L. 1974, p. 1177, § 1; Ga. L. 1977, p. 1096, § 1; Ga. L. 1978, p. 1652, § 1; Ga. L. 1994, p. 1874, § 1; Ga. L. 1998, p. 154, § 1; Ga. L. 2009, p. 322, § 1/HB 476; Ga. L. 2009, p. 947, § 18/HB 202; Ga. L. 2010, p. 1207, § 18/SB 436.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, added subsection (f). The second 2009 amendment, effective May 11, 2009, in subsection (d), substituted “whose current membership began prior to July 1, 1982, and who has” for “with” and substituted “the member” for “he”.

The 2010 amendment, effective July 1, 2010, in subsection (a), inserted “or her” throughout, added “and” at the end of paragraph (a)(1), substituted a period for “; and” at the end of paragraph (a)(2), and deleted former paragraph (a)(3), which read: “If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the annuity allowable at age of retirement, provided that such pension does not exceed the annuity which would have been allowable at age 65 by more than twice the amount of his prior service accumulations as defined in Code Section 47-2-96 with regular interest on such amount as from time to time in effect, which interest shall be figured from the date of establish-

ment until the earlier of the date of his retirement or the date on which he attains 65 years of age.”

Editor's notes. — Ga. L. 1994, p. 1874, § 1, amending subsection (a) of this Code section, was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and was repealed on July 1, 1994. See the state auditor's report, the final item in the Georgia Laws 1994.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, op-

tion, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or elec-

tion shall be subject to the statutory provisions in effect on June 30, 2010."

JUDICIAL DECISIONS

Construed with § 47-2-123. — Benefits due as disability retirement under O.C.G.A. § 47-2-123 of the statutes governing the Employees' Retirement System are not to be calculated in reference to subsections (c) and (d) of O.C.G.A. § 47-2-120, which allow for eligibility for service retirement benefits as if the member were age 65, regardless of the member's age, if the member has tendered 30 or 34 years of service, respectively. Such reference would create a projection on top of a projection. *Sledge v. Employees' Retirement Sys.*, 196 Ga. App. 597, 396 S.E.2d 550 (1990).

Reduction in amount of pension for persons retiring before July 1, 1998 proper as established prior to a judge's retirement, when the judge had relied upon the system's calculation of benefits prior to the time that the judge submitted the judge's resignation and the calculated benefits were paid to the judge for a period of time after the judge's retirement. *Quillian v. Employees' Retirement Sys.*, 259 Ga. 253, 379 S.E.2d 515 (1989).

Pensions of employees who retired on or before July 1, 1998, after reaching 60, but with less than 30 years of creditable service, were properly reduced; even before 1998, the Board of Trustees of the Employees Retirement System of the State of Georgia possessed the discretionary authority to reduce pensions based on age for retirees less than 65 with less than 30 years of creditable service. *Alverson v. Employees' Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

Authority granted to Board of Trustees. — Neither O.C.G.A. § 47-2-120(a) nor O.C.G.A. § 47-2-110(a) provides a formula for the calculation of service retirement benefits; the authority to do so rests with the Board of Trustees of the Employees Retirement System of the State of Georgia (ERS) under the general grant of authority in O.C.G.A. § 47-2-21 to effectuate the provisions of the ERS Act, O.C.G.A. § 47-2-1 et seq., including the specific grants of authority found in O.C.G.A. §§ 47-2-26(a) and 47-2-28(a) and (b). *Alverson v. Employees' Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

OPINIONS OF THE ATTORNEY GENERAL

Certain members eligible to cease contributions. — Member of the retirement system who has attained 34 years of creditable service, and who is eligible for service retirement and the projection-in-service factor, regardless of age, may elect to cease making contributions to the retirement system, and any member who has continued making contributions after attaining 34 years of creditable service under the assumption that this was required by law would be eligible, upon one's election and request, to be refunded the excess contributions made after the attainment of one's thirty-fourth year of service. 1978 Op. Att'y Gen. No. 78-47.

Availability of projection in service. — Projection in service allowed to members with at least 34 years of service provided for in subsection (d) of O.C.G.A. § 47-2-120 is only available to those persons seeking a service retirement allowance and not those

whose retirement allowance is based on the death, disability, or involuntary separation of a member. 1987 Op. Att'y Gen. No. 87-9.

Provision authorizing change in employer contribution rate applicable beginning 1974. — Provisions of subsection (d) of Ga. L. 1974, p. 1177, § 1 (see O.C.G.A. § 47-2-120) and Ga. L. 1974, p. 1177, § 2, which authorized the board of trustees to raise the rate of contribution by the employer, are applicable to members of the retirement system who elect to retire with a retirement commencement date of July 1, 1974. 1974 Op. Att'y Gen. No. 74-47.

Right to receive a retirement allowance after 25 years of service, provided for in subsection (e) of O.C.G.A. § 47-2-120, is not a new "benefit" that has accrued and is not proscribed by O.C.G.A. § 47-2-70(c). 1999 Op. Att'y Gen. No. 99-10.

47-2-121. Optional retirement allowances.

(a) A member may elect to convert the retirement allowance otherwise payable to him or her into a modified retirement allowance of equivalent actuarial value in accordance with one of the options set forth in subsections (b) through (e) of this Code section; provided, however, that the member may only make such election after he or she has become eligible to retire and before the first payment of his or her retirement allowance normally becomes due; provided, further, that if a member was or is unmarried at the time he or she retires and subsequently marries, such member may make such election not later than December 31, 1998, or within six months after the date of marriage, whichever date is later. If a member with a named living beneficiary dies or is determined to be mentally incompetent after becoming eligible to retire, his or her election, or option two in the absence of such election, shall be effective.

(b) Option one shall consist of a reduced retirement allowance which is payable during the life of the retired member, with the provision that if he dies before he has received in payments of his annuity the amount of his accumulated contributions at the time of his retirement, the balance of such amount shall be paid to the person, if any, nominated by him by written designation duly executed and filed with the board of trustees; otherwise such amount shall be paid to the retired member's estate.

(c) Option two shall consist of a reduced retirement allowance which is payable during the life of the retired member and which, upon his death, shall be continued at the same rate throughout the life of and paid to the person nominated by him by written designation duly executed and filed with the board of trustees at the time of his retirement.

(d) Option three shall consist of a reduced retirement allowance which is payable during the life of the retired member and which, upon his death, shall be continued at the rate of one-half the reduced retirement allowance throughout the life of and paid to the person nominated by him by written designation duly executed and filed with the board of trustees at the time of his retirement.

(e) Any other provisions of law to the contrary notwithstanding, until the first payment of any member's retirement allowance becomes payable and upon approval of the board of trustees, the member shall have the option, which shall be known as option four, to elect to convert his retirement allowance into any method of payments which he may deem necessary. Those payments shall be paid either to the member or, at his election, to any designated person, to the estate of the member, or to the estate of any designated person. Monthly payments under this option which are in excess of the member's monthly retirement allowance when computed without option shall be payable only for a period not to exceed five continuous years from the date of the first payment; and such monthly payments shall not

exceed 135 percent of the member's monthly retirement allowance, when computed without option. Except in cases where years certain payments have been established for the member, no monthly allowance shall be payable to the beneficiary in an amount greater than the monthly allowance which would have been payable to the member's beneficiary under option two.

(e.1) When option two or three is elected and the spouse or child of the retired member who qualifies as a dependent under the Internal Revenue Code of 1986 is the person designated to receive all amounts and benefits upon the death of the retired member, option five shall consist of the added provision that in the event the spouse or dependent child predeceases the retired member, the retirement allowance payable to the retired member after the death of the spouse or dependent child shall be equal to the maximum retirement allowance which the retired member would have been entitled to receive under this chapter.

(e.2)(1) As used in this subsection, the term "retired member" means a person retired under this chapter who elected an optional allowance under this Code section with the spouse designated as the person to receive all amounts upon the death of the retired member.

(2) In the event a designated spouse predeceases a retired member and the retired member subsequently remarries, the retired member may elect to begin receiving an actuarially reduced benefit of equivalent value and reestablish on behalf of the new spouse the same option which was applicable to the deceased former spouse, but such option on behalf of the new spouse may not be reestablished until one year after the date of remarriage or until a child of the remarried couple is born, whichever is earlier.

(3) This subsection applies to retired members who retired at any time prior to July 1, 1992, as well as to those who retire on or after that date, and it is specifically provided that the election of option five under subsection (e.1) of this Code section is not necessary for the purposes of this subsection.

(e.3)(1) As used in this subsection, the term "retired member" means a person retired under this chapter who elected an optional allowance under this Code section with a child who qualifies as a dependent under the Internal Revenue Code of 1986 designated as the person to receive all amounts upon the death of the retired member.

(2) In the event a designated dependent child predeceases a retired member and the retired member is married or subsequently marries, the retired member may elect to begin receiving an actuarially reduced benefit of equivalent value and reestablish on behalf of the spouse the same option which was applicable to the deceased dependent child, but such option on behalf of the spouse may not be reestablished until one

year after the date of the death of the dependent child or, in the case of the remarriage of the retired member, one year after the date the retired member remarries.

(3) This subsection applies to retired members who retired at any time prior to July 1, 1996, as well as to those who retire on or after that date.

(e.4) Option six shall consist of a reduced retirement allowance together with a partial lump sum distribution. This option may be elected by any retiring member including members electing another optional allowance under this Code section except that this option shall not be available to members retiring pursuant to Code Section 47-2-123 or members subject to the requirements of subsection (e) of Code Section 47-2-120. The amount of the lump sum distribution under this subsection may not exceed the sum of 36 months of the monthly retirement allowance the retiring member would have received had he or she not elected the partial lump sum option. The partial lump sum distribution will be made as a single payment payable at the time the first monthly retirement allowance is paid to the retired member.

(f) Any provisions of this Code section to the contrary notwithstanding, any member who has elected option three may waive the payment of one-half of the reduced retirement allowance payable to the person nominated by the member by filing a written declaration of waiver with the board of trustees. The waiver of such payments to the person nominated shall not affect or increase the reduced retirement allowance payable during the life of the retired member, but such waiver shall merely act as a forfeiture of those allowances which would otherwise have been payable to the person nominated by the retired member.

(g) Any other provisions of this Code section or of this chapter to the contrary notwithstanding, the board of trustees may, by rule or regulation, require that when a member or a retired member dies and the beneficiary is a person other than the surviving spouse of the member, the benefits payable to the beneficiary shall be paid to the beneficiary within a definite time period immediately following the death of the member or retired member.

(h) Whenever any retired member has elected an optional allowance under this Code section and the spouse is the person designated to receive all amounts and benefits upon the death of the retired member, the retired member may revoke the election at any time after the entry of a final judgment of complete divorce from the spouse so nominated or the retired member may elect to continue the optional allowance with the former spouse designated to receive all amounts and benefits upon the death of the retired member. Upon any such revocation or upon the death of the spouse of a retired member who had elected option five, the retired member may elect to begin receiving the maximum retirement allowance which the

retired member would have been entitled to receive under this chapter. In the event any such retired member remarries after divorce from the former spouse and the former spouse was not continued as a beneficiary under the optional allowance after the divorce, the retired member may elect to begin receiving the applicable actuarially reduced retirement benefit of equivalent actuarial value and reestablish on behalf of the new spouse the same option which was applicable to the former spouse, but such option on behalf of the new spouse may not be reestablished until one year after the date of remarriage or until a child of the remarried couple is born, whichever is earlier.

(i) Whenever any retired member was unmarried at the time of retirement and he or she has elected an optional allowance under this Code section and has named a designated beneficiary or beneficiaries to receive all amounts and benefits upon the death of the retired member, the retired member may revoke the election at any time after the member marries or remarries and designate the current spouse as the person to receive all amounts and benefits upon the death of the retired member. In such event, the member shall receive the applicable actuarially reduced retirement benefit of equivalent actuarial value and establish on behalf of the new spouse optional allowance two, three, four, or five, as provided in this Code section. Upon the death of such spouse or upon the entry of a final order of divorce, the provisions of subsection (h) of this Code section shall become applicable.

(j)(1) Upon the death of the retired member and then the death of the person designated to receive continuing retirement benefits under option two, three, four, or five, if the total monthly benefits paid to the retired member and to such person designated to receive continuing benefits, including any partial lump-sum distribution, do not equal or exceed the retired member's accumulated contributions at the time of his or her retirement, the difference shall be refunded to the person designated in writing by the retired member to receive such a refund of this difference. If no such person is designated to receive a refund of this difference, or if such designated person has predeceased the person designated to receive continuing monthly retirement benefits, or if such designees are the same person, this difference shall be paid to the estate of the person designated to receive continuing monthly retirement benefits.

(2) Upon the death of the person designated by the retired member to receive continuing monthly retirement benefits under option two, three, four, five, or six and then the death of the retired member, if the total monthly benefits paid to the retired member prior to his or her death, including any partial lump-sum distribution, do not equal or exceed the retired member's accumulated contributions at the time of his or her retirement, the difference shall be refunded to the person designated in

writing by the retired member to receive such a refund of this difference. If the person designated by the retired member to receive a refund of this difference also predeceases the retired member, or if such designees are the same person, or if no person is designated to receive a refund of this difference, this difference shall be paid to the estate of the retired member. (Ga. L. 1949, p. 138, § 5; Ga. L. 1957, p. 172, § 1; Ga. L. 1957, p. 283, § 7; Ga. L. 1959, p. 107, § 5; Ga. L. 1961, p. 143, § 4; Ga. L. 1976, p. 247, § 1; Ga. L. 1984, p. 810, § 1; Ga. L. 1988, p. 636, § 1; Ga. L. 1992, p. 1141, §§ 1, 2; Ga. L. 1996, p. 1248, §§ 1, 2; Ga. L. 1998, p. 153, § 1; Ga. L. 2004, p. 580, § 1; Ga. L. 2004, p. 588, §§ 1, 2; Ga. L. 2005, p. 46, § 1/HB 178; Ga. L. 2005, p. 52, § 1/HB 381.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, subsection (i) as added by Ga. L. 2004, p. 588, § 2 was redesignated as subsection (j).

Editor's notes. — Ga. L. 1992, p. 2975, adding subsection (e.2) and amending subsection (h) of this Code section, was not concurrently funded as required by Code

Section 47-20-50 and, therefore, did not become law and became repealed on July 1, 1992. Ga. L. 1992, p. 1141, §§ 1 and 2, also adding subsection (e.2) and amending subsection (h) of this Code section, was funded. See the state auditor's report at Ga. L. 1992, p. CDV.

OPINIONS OF THE ATTORNEY GENERAL

Retroactive options. — Insofar as retroactive application of the options created by Ga. L. 1988, p. 636 i.e., subsections (e.1) and (h), is concerned, the options concerning

the death of a spouse are not retroactive, but the options concerning divorce are retroactive. 1989 Op. Att'y Gen. No. U89-1.

47-2-122. Vesting of rights to a retirement allowance despite early retirement; retirement allowance payable to such persons.

Except as provided in Article 2 of Chapter 1 of this title, a member's accumulated contributions shall be 100 percent vested and nonforfeitable at all times. The right to a service retirement allowance under this chapter shall vest in any member who withdraws from service with at least ten years of membership service subsequent to January 1, 1954, although the member has not yet attained 60 years of age, provided that the member has not withdrawn the member's contributions. Such member shall become entitled to a service retirement allowance (1) upon filing an application as provided in Code Section 47-2-110 and (2) upon attaining the age of 60 or, at the member's option, at any time subsequent thereto after filing such application. The retirement allowance in the case of any such member shall be the monthly amount the member would have received had the member retired on the last day the member contributed to the retirement system and at that time had been the same age as when the member actually retired. If a member with vested rights dies before reaching age 60, the member's accumulated contributions shall be paid to the member's named living beneficiary, otherwise to the member's estate. (Ga. L. 1951, p. 394,

§ 8; Ga. L. 1963, p. 42, § 2; Ga. L. 1972, p. 360, § 4; Ga. L. 2009, p. 947, § 19/HB 202.)

The 2009 amendment, effective May 11, 2009, added the first sentence; and, throughout this Code section, substituted “the mem-

ber” for “he” and substituted “the member’s” for “his”.

OPINIONS OF THE ATTORNEY GENERAL

Application of “95% rule” to vesting provisions contained in O.C.G.A. § 47-2-124 to the vesting provisions of O.C.G.A. § 47-2-122 should be resolved by the Board of Trustees of the Employees Retirement System in light of the possible conflict with existing policies. 1992 Op. Att’y Gen. No. 92-24.

47-2-123. Allowance payable upon death, disability, or involuntary separation from employment; restrictions on separation for disability; restrictions on entitlement to involuntary separation benefits.

(a) Upon the death or involuntary separation from employment without prejudice of any member in service, he shall be entitled to an allowance in accordance with subsection (c) of this Code section, provided that the provisions of this subsection that relate to “upon becoming involuntarily separated from employment without prejudice” shall not be applicable to any person who first becomes a member after March 31, 1972.

(b)(1) Subject to the provisions of paragraphs (2) through (5) of this subsection, any member in service who has at least 15 years of creditable service may be retired on a disability allowance by the board of trustees, upon written application to the board of trustees by the member or his or her employer and upon certification by the medical board that he or she is medically or physically incapable of further performance of his or her duties in the position he or she held at the time his or her disability originated, that incapacity is likely to be permanent, and that he or she should be retired; provided, however, that the medical board shall not consider any evidence of such disability which is not submitted within 12 months after the date the member submits his or her first application for a disability retirement. The board of trustees may retire such member not less than 30 days nor more than 90 days after execution and filing of the written application.

(2) A member making application for a disability retirement pursuant to paragraph (1) of this subsection shall at the same time submit a copy of such application together with any supporting documentation accompanying such application to his or her employing agency. The member shall thereafter provide the employing agency with any additional information or documentation which he or she submits to the board of trustees in conjunction with such application.

(3) After receipt of the notice provided for in paragraph (2) of this subsection, the head of the member’s agency or his or her designee shall

conduct an interview with the member applying for disability retirement; provided, however, that any designee of the head of an agency shall be an official at such agency who is above the level of the applicant's immediate supervisor and who has the authority to make job assignment decisions. The interview shall be held within ten business days after receipt of such notice. Based on the interview and information received by the agency pursuant to paragraph (2) of this subsection, the agency head or his or her designee shall determine if an alternative position is available for the member which meets the following requirements:

(A) The physical requirements for such position are compatible with the member's physical limitations;

(B) The annual compensation and possibility for future advancement for such position shall be the same as or greater than that of the current position of the member;

(C) The duties for such position shall be reasonably compatible with the experience and educational qualifications of the member;

(D) The position shall be one which includes the holder thereof as a member of the retirement system provided for by this chapter; and

(E) The position must be available for acceptance by the member and an offer of the position to the official or member must be made, in writing, by not later than 45 days after the member submitted his or her application for a disability retirement.

An agency making an offer of alternative employment as provided in this paragraph shall so notify the board of trustees within 45 days after the member submitted his or her application for a disability retirement. After receipt of such notice, the board of trustees shall not approve a disability retirement until the procedures of paragraph (4) of this subsection are resolved.

(4) Any member applying for a disability retirement who is offered a position of employment in conformity with the requirements of paragraph (3) of this subsection shall accept the offer or dispute his or her ability to perform the tasks required by the position offered by submitting a written appeal to the agency and to the board of trustees within 30 days after receiving the offer. In the event of an appeal, the agency shall promptly submit to the medical board a detailed description of the requirements of the position offered and the medical board shall determine, based upon all information available to it, whether the member is reasonably capable of performing such tasks. The decision of the medical board shall be final. If the medical board determines that the member is unable to perform the tasks required either by the position held at the time of the application for a disability retirement or the position offered, the member shall be placed on disability retirement immediately.

(5) A member who refuses to accept a position offered or file an appeal in a timely manner or who refuses to accept a position which the medical board has determined on appeal that he or she is capable of performing shall not be eligible to receive a disability retirement under this subsection.

(c)(1) The provisions of this paragraph shall apply only to persons who are members of the retirement system on June 30, 2007. Any member who is at least 60 years of age upon disability retirement, involuntary separation from employment without prejudice, or death shall receive the equivalent of a service retirement allowance. Any such member who is under 60 years of age shall receive, as appropriate, a disability allowance, allowance in case of involuntary separation from employment without prejudice, or death allowance, which shall consist of:

(A) In the case of a member with at least 15 years of service, 75 percent of the service retirement allowance which would have been payable upon service retirement at age 60 had the member continued in service to age 60 without further change in compensation, provided that this subparagraph shall not apply to a member whose employment was terminated by involuntary separation without prejudice;

(B) In the case of a member with at least 20 years of service, the service retirement allowance which would have been payable upon service retirement at age 60 had the member continued in service to age 60 without further change in compensation;

(C) In the case of a member with at least 25 years of service, 75 percent of the service retirement allowance which would have been payable upon service retirement at age 65 had he or she continued in service without further change in compensation; or

(D) In the case of a member with at least 30 years of service, the service retirement allowance which would have been payable upon service retirement at age 65 had he or she continued in service without further change in compensation.

Any provisions of this chapter to the contrary notwithstanding, in the application of subparagraphs (A), (B), (C), and (D) of this paragraph relating to allowances other than for disability or death, projected retirement allowance computations shall be made on the basis of the member's highest total monthly earnable compensation, as reflected by monthly contributions made during the last 24 calendar months in which he or she had made contributions, except that no salary increase by adjustment in compensation in any manner in excess of 10 percent during the last 12 months of membership service shall be included in the projected computation.

(2) The provisions of this paragraph shall apply only to persons who first or again become members of the retirement system on or after July

1, 2007. Any member who has at least 15 years of creditable service and who becomes disabled before becoming eligible for a service retirement as provided in subsection (a) of Code Section 47-2-110 shall be eligible to retire forthwith without regard to age and to receive a disability retirement allowance calculated upon the number of years of creditable service attained to the date of retirement and based upon his or her highest average monthly compensation during a period of 24 consecutive calendar months while a member of the retirement system. No member who is eligible for an equivalent service retirement shall be eligible to apply for a disability retirement allowance.

(3) In lieu of a death benefit as provided in paragraph (1) of this subsection, a member who first or again becomes a member of the retirement system on or after July 1, 2007, and who has at least ten years of creditable service and is at least 60 years of age or who is less than 60 years of age and has at least 15 years of creditable service shall upon death receive the equivalent of a service retirement allowance calculated upon the number of years of creditable service attained on the date of death and based upon his or her highest average monthly compensation during a period of 24 consecutive calendar months while a member of the retirement system.

(d) In the application of subsection (c) of this Code section to death allowances, computations of projected retirement allowances shall be made on the same basis as though option two had been in effect. In lieu of the amount of death allowance otherwise payable to the beneficiary under option two, the member, upon written request, may at any time elect a reduced level death allowance of equivalent actuarial value, which allowance is payable to the beneficiary during a period of years certain or to the estate of the beneficiary and during the lifetime of such named beneficiary thereafter. At the election of the member, in case of death of the beneficiary during a term of years certain, the balance of the years certain payments may be paid to the estate of the member; but if such beneficiary predeceases the member, the total amount of the member's contributions to the date of his death shall be payable to the member's estate. The method of determining the equivalent actuarial value shall be consistent with the actuarial method of determining the beneficiary's death allowance under option two.

(e) Anything in this chapter to the contrary notwithstanding, on and after March 6, 1963, a member who has not accumulated sufficient creditable service to qualify himself for an allowance in case of involuntary separation from employment without prejudice shall not be deemed eligible for such allowances until he has accumulated sufficient membership service in a position classified under a merit system provided for by law or in a position covered under the retirement system. This subsection shall not affect the vesting of rights under Code Section 47-2-122. This subsection

shall not be retroactive in any manner and shall not apply in any way to any person who was a member on or before February 13, 1962.

(f) The age and service requirements for a service retirement allowance shall not apply to allowances available under this Code section.

(g) From and after January 1, 1985, no employing unit within the government of the State of Georgia, including every department, commission, board, bureau, agency, branch of government, or any other employing unit by whatever name called, which has the authority and power to appoint, employ, release, separate, or fail to reappoint public officials or employees shall release or separate from state service, or fail to reappoint to continued state service, any public official or employee who is entitled to coverage under the involuntary separation retirement benefits provisions of this Code section. A release, separation, or failure to reappoint in violation of the provisions of this subsection shall be illegal, unlawful, and void. However, such releases or separations from state service or failures to reappoint to continued state service shall not be subject to the provisions of this subsection if such releases or separations from service or failures to reappoint occur under any of the following circumstances:

(1) Separation or release from service of an official or employee pursuant to Code Section 47-2-2 or separation or release from service of an official or the failure to reappoint an official by a board when such official serves at the pleasure of the board;

(2) Separation or release from service of an official or employee for any reason which would constitute cause as defined in the rules and regulations of the State Personnel Board if such separation or release from service is not pursuant to Code Section 47-2-2;

(3) Separation or release from service of an official or employee for criminal conduct under the laws of this state, any other state, or the United States; or

(4) A "discretionary termination" which means any one of the following:

(A) Separation or release from service of an official or employee under circumstances in which an official or employee is released or separated or any official's or employee's position or job is abolished through a valid reduction-in-force plan approved by the State Personnel Administration;

(B) Separation or release from service of any official or employee by reason of a bona fide reorganization of any employing unit, with respect to which reorganization any such separations or releases have been approved in advance by the Governor; or

(C) Separation or release from service of an official or employee, or failure of reappointment of an official or employee, who holds a

confidential position to an appointed or elected public official, or a group of appointed or elected public officials, incurred as a result of a change of administration in the office of such appointed or elected public official, or group of appointed or elected public officials.

(h)(1) Except where termination is required by a sudden and unexpected loss of federal or state funds, an employer intending the discretionary termination of an official or employee shall notify the commissioner of personnel administration at least 60 but not more than 120 days prior to the effective date of the discretionary termination of such official or employee. If termination is required by a sudden and unexpected loss of federal or state funds, the employer shall notify the commissioner of personnel administration as soon as the employer becomes aware of the loss of funds and the termination shall be delayed until the completion of the procedures required by this subsection. Pending the completion of such procedures, the employee or official proposed for termination because of a sudden and unexpected loss of federal or state funds shall be compensated from any funds appropriated or available to the employer which may be used for such purpose. The notice shall be in writing and a copy thereof shall be forwarded to the board of trustees at the same time it is forwarded to the commissioner of personnel administration. The notice shall include the following information:

(A) The name and current annual compensation of the official or employee proposed for discretionary termination;

(B) The age, length of service, current job description, and summary of the work experience of the official or employee proposed for discretionary termination;

(C) The educational qualifications of the official or employee proposed for discretionary termination; and

(D) An explanation of the reasons for the proposed discretionary termination of the official or employee.

(2) After receipt of the notice provided for in paragraph (1) of this subsection, the commissioner of personnel administration shall schedule an interview with the official or employee proposed for discretionary termination. The interview shall be held within 15 days after receipt of the notice. Based on the interview with the official or employee proposed for discretionary termination and the information provided by the notice received by the commissioner pursuant to paragraph (1) of this subsection, the commissioner of personnel administration shall contact appropriate state departments, boards, bureaus, and other agencies of the state government for the purpose of seeking continued employment for the official or employee proposed for discretionary termination. Any position for continued employment of the official or employee proposed for discretionary termination which is obtained by the commissioner of personnel administration shall meet the following requirements:

(A) The annual compensation for such position shall be the same or greater than the current annual compensation of the official or employee proposed for discretionary termination;

(B) The duties for such position shall be reasonably compatible with the previous work experience and educational qualifications of the official or employee proposed for discretionary termination;

(C) The position shall be one which includes the holder thereof as a member of the retirement system provided for by this chapter; and

(D) The position must be available for acceptance by the official or employee proposed for discretionary termination at least one day prior to the effective date of such termination and an offer of the position to the official or employee must be made, in writing, by not later than the day immediately preceding the effective date of the discretionary termination.

(3) Any official or employee proposed for discretionary termination who is offered a position of continued employment in conformity with the requirements of paragraph (2) of this subsection shall be deemed to have resigned from service at his or her own choice upon the failure of such official or employee to accept the position of continued employment, and no such official or employee so resigning from service shall qualify for retirement benefits based upon involuntary separation from employment without prejudice as authorized by this Code section.

(4) If the commissioner of personnel administration fails to obtain a position of continued employment in conformity with the requirements of paragraph (2) of this subsection for an official or employee proposed for discretionary termination, then, on the effective date of the discretionary termination, the official or employee may be considered involuntarily separated from employment without prejudice for the purposes of this Code section.

(5) The commissioner of personnel administration shall notify the board of trustees in writing of the action taken by the commissioner pursuant to this subsection and of any position of continued employment which is offered to and accepted or refused by an official or employee proposed for discretionary termination.

(6) It is the intention of this subsection to provide procedures to secure the continued employment of officials and employees who may become subject to discretionary termination, and the provisions of this subsection shall not be construed to create any right to continue in a position of employment when that right does not exist independently of this subsection. (Ga. L. 1949, p. 138, § 5; Ga. L. 1951, p. 394, § 6; Ga. L. 1952, p. 175, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 349, § 5; Ga. L. 1957, p. 283, §§ 5, 6; Ga. L. 1959, p. 107, § 4; Ga. L. 1962, p. 54, § 5; Ga. L. 1962,

p. 152, § 1; Ga. L. 1963, p. 42, § 1; Ga. L. 1968, p. 1361, § 1; Ga. L. 1970, p. 26, § 2; Ga. L. 1971, p. 685, § 1; Ga. L. 1972, p. 360, § 3; Ga. L. 1984, p. 1296, § 3; Ga. L. 1985, p. 209, § 1; Ga. L. 1995, p. 333, § 1; Ga. L. 2006, p. 223, § 1/HB 379; Ga. L. 2007, p. 73, § 1/SB 162; Ga. L. 2009, p. 322, § 2/HB 476; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, added paragraph (c)(3). The second 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” in subparagraph (g)(4)(A).

The 2010 amendment, effective July 1, 2010, substituted “ten years” for “10 years” near the middle of paragraph (c)(3).

Editor’s notes. — Ga. L. 1984, p. 1296, § 5, not codified by the General Assembly, provided that this Act would become effective on January 1, 1985, only if a proposed amendment (see Ga. L. 1984, p. 1726) to the Constitution (Ga. Const. 1983, Art. III, Sec. X, Para. VI) authorizing the General Assembly to revise provisions of public retirement or pension systems relating to involuntary separation from employment were ratified at the 1984 general election. Such approval was given at that election.

Ga. L. 1984, p. 1296, § 6, not codified by the General Assembly, provided: “Pursuant to the authority of the proposed constitutional amendment described in Section 5 of this Act and being contingent for its effectiveness on January 1, 1985, upon the ratification of such proposed constitutional amendment, this Act is exempt from the provisions of Chapter 20 of Title 47 of the Official Code of Georgia Annotated known

as the ‘Public Retirement Systems Standards Law.’”

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 107, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

Law reviews. — For annual survey of recent developments, see 38 Mercer L. Rev. 473 (1986).

JUDICIAL DECISIONS

Legislative intent. — General Assembly intended subsection (h) of O.C.G.A. § 47-2-123 to provide procedures to secure the continued employment of officials and employees who may become subject to discretionary termination, it did not intend to create any right to continue in a position of employment. *Alford v. Public Serv. Comm’n*, 262 Ga. 386, 418 S.E.2d 13 (1992).

General Assembly intended for the state to retain employees eligible for involuntary

separation benefits, but required the state to offer a reasonably comparable job at the same pay to any employee subject to a discretionary termination. *Alford v. Public Serv. Comm’n*, 262 Ga. 386, 418 S.E.2d 13 (1992).

Employee must be personally examined when involuntarily retired for disability. — When an employee is to be involuntarily retired under subsection (b) of this statute, the medical board is required to have the employee personally examined in order to

provide a basis for the board's report. *Cantrell v. State*, 129 Ga. App. 465, 200 S.E.2d 163 (1973), *aff'd*, 231 Ga. 704, 203 S.E.2d 493 (1974), *overruled in part* on other grounds, *Cantrell v. Board of Trustees of Employees' Retirement Sys.*, 135 Ga. App. 445, 218 S.E.2d 97 (1975) (see O.C.G.A. § 47-2-123).

Examination may be by any physician on medical board. — Subsection (b) of this statute does not require that any one or all of the three physicians constituting the medical board personally make the required examination. *Cantrell v. State*, 129 Ga. App. 465, 200 S.E.2d 163 (1973), *aff'd*, 231 Ga. 704, 203 S.E.2d 493 (1974), *overruled in part* on other grounds, *Cantrell v. Board of Trustees of Employees' Retirement Sys.*, 135 Ga. App. 445, 218 S.E.2d 97 (1975) (see O.C.G.A. § 47-2-123).

Procedures of subsection (h) of O.C.G.A. 47-2-123 are applicable only if benefits under the Act are sought. *Tanner v. Freeman*, 257 Ga. 146, 356 S.E.2d 201 (1987).

When the only issue is reinstatement and when the procedure followed to achieve this remedy is an appeal to the State Personnel Board and not the Employees' Retirement System, the technicalities of O.C.G.A. § 47-2-123 do not come into play. *Tanner v. Freeman*, 257 Ga. 146, 356 S.E.2d 201 (1987).

Effect of failure to follow termination procedures. — An attempt by the state to terminate the employment of an employee who is entitled to coverage under the involuntary separation retirement benefits provisions of O.C.G.A. § 47-2-123 without following the specified procedures is ineffective. *State v. Hudgins*, 220 Ga. App. 555, 469 S.E.2d 363 (1996).

Limited eligibility for deputy conservation rangers. — General Assembly specifically limited eligibility of deputy conservation ranger for benefits to a claim based upon injury incurred in the line of law enforcement duty. The fact that the legislature did not see fit to use the same language with respect to the other officers and agents covered by O.C.G.A. § 47-2-123 is clearly indicative of the intention that the language is to have a different meaning as applied to the other covered employees than it does as applied to a deputy conservation ranger. *Allison v. Domain*, 158 Ga. App. 542, 281 S.E.2d 299 (1981).

Prohibition against involuntary separations. — Subsection (g) of O.C.G.A. § 47-2-123 generally prohibits involuntary separations from state government that would trigger the payment of early retirement benefits. *Alford v. Public Serv. Comm'n*, 262 Ga. 386, 418 S.E.2d 13 (1992).

When employee entitled to separation benefits. — When an employee has been separated from employment without prejudice, the relevant issue for determining whether the employee is entitled to separation benefits is whether the termination was voluntary or involuntary. *Boyd v. Employees' Retirement Sys.*, 200 Ga. App. 345, 408 S.E.2d 157 (1991).

Discretionary termination. — When an employee becomes subjected to a discretionary termination, subsection (h) of O.C.G.A. § 47-2-123 requires the commissioner of personnel administration to seek continued employment for the employee at the "same or greater" annual compensation and with duties that are "reasonably compatible with the previous work experience and educational qualifications" of the employee. *Alford v. Public Serv. Comm'n*, 262 Ga. 386, 418 S.E.2d 13 (1992).

Discharge not involuntary when caused intentionally by employee. — State employee is not involuntarily discharged from employment when the employee knowingly and intentionally brings about the discharge, or engages in conduct, such as insubordination, excessive absences, or other misconduct which the employee knew or should have known would lead to the employee's dismissal from employment. *Haggins v. Employees' Retirement Sys.*, 255 Ga. 352, 338 S.E.2d 1 (1986).

Employee's objectionable conduct, consisting of the illegal acceptance of gratuities and the purposeful failure to comply with state laws and regulations, constituted the kind of activity that any employee would know or should have known would result in the employee's dismissal, and thus did not constitute involuntary separation within the meaning of O.C.G.A. § 47-2-123. *Boyd v. Employees' Retirement Sys.*, 200 Ga. App. 345, 408 S.E.2d 157 (1991).

Requirements of Public Service Commission. — Although O.C.G.A. § 47-2-123 does not require the Public Service Commission

(PSC) to reappoint plaintiff as a confidential secretary, the PSC must offer plaintiff a job with reasonably compatible duties and at the same pay as the plaintiff's former secretarial job. *Alford v. Public Serv. Comm'n*, 262 Ga. 386, 418 S.E.2d 13 (1992).

Projections in § 47-2-120(c) and (d) not applicable. — Benefits due as disability retirement under O.C.G.A. § 47-2-123 of the statutes governing the Employees' Retirement System are not to be calculated in reference to O.C.G.A. § 47-2-120(c) and (d), which allow for eligibility for service retirement benefits as if the member were age 65, regardless of the member's age, if the member has tendered 30 or 34 years of service, respectively. Such reference would create a projection on top of a projection. *Sledge v. Employees' Retirement Sys.*, 196 Ga. App. 597, 396 S.E.2d 550 (1990).

Interpretation of "fail to reappoint." — Phrase "fail to reappoint" in subsection (g) of O.C.G.A. § 47-2-123 means the failure to reappoint an employee to another state position at the same pay and with reasonably compatible duties. *Alford v. Public Serv. Comm'n*, 262 Ga. 386, 418 S.E.2d 13 (1992).

Judicial review of disability determination. — Superior court lacked jurisdiction for direct appellate review of the denial of a state employee's application for retirement disability benefits under O.C.G.A. § 47-2-123(b)(1). O.C.G.A. § 47-2-3 was inapplicable because the employee was not discharged from employment. *Employees' Ret. Sys. of Ga. v. Harris*, 303 Ga. App. 191, 692 S.E.2d 798 (2010).

Cited in Georgia Bd. of Pub. Safety v. Jordan, 252 Ga. App. 577, 556 S.E.2d 837 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Nonretiring employee contracting hepatitis prior to 1970 not compensated. — Employee who has not retired under Ga. L. 1949, p. 138 and who contracted infectious hepatitis prior to the effective date of Ga. L. 1970, p. 737, § 1 et seq. (see O.C.G.A. Ch. 29, T. 31), would not be compensable. 1970 Op. Att'y Gen. No. U70-170.

Section applicable to unwilling resignation. — When a superior public official having appointing and removing authority over a subordinate public official requests the resignation of the subordinate official, which the subordinate, not willingly by the subordinate's own choice, submits to the superior official, the provisions of this statute are fully as applicable as if the superior official merely had discharged or fired the subordinate. 1968 Op. Att'y Gen. No. 68-130 (see O.C.G.A. § 47-2-123).

Construction. — Military service which could be purchased as creditable service pursuant to former O.C.G.A. § 47-2-96(f) could not be used to obtain the 18.1 years necessary to qualify for involuntary separation retirement benefits under paragraph (c)(2) of O.C.G.A. § 47-2-123. 1991 Op. Att'y Gen. No. 91-32.

Application for involuntary separation may be made to board when official is not formally dismissed. 1968 Op. Att'y Gen. No. 68-130.

General Assembly member's service included in determining involuntary benefits' eligibility. — Applying the rules of statutory construction, the service allowable year for year to former members of the General Assembly is creditable as "membership service" and, hence, is includable for determinations of eligibility for involuntary separation retirement benefits. 1971 Op. Att'y Gen. No. 71-5.

Service as a member of the General Assembly subsequent to January 1, 1954, which has been paid for as membership service in the Georgia Legislative Retirement System, and which has been transferred from the Legislative Retirement System to the Employees' Retirement System of Georgia, is creditable as membership service for the purpose of determining eligibility for the involuntary separation benefits provided by this statute. 1973 Op. Att'y Gen. No. U73-17 (see O.C.G.A. § 47-2-123).

Unclassified employees of Department of Technical and Adult Education who are entitled to involuntary separation benefits may only be separated pursuant to a plan approved by the Governor under subparagraph (g)(4)(B) of O.C.G.A. § 47-2-123. Classified employees who are entitled to involuntary separation benefits, on the other hand, may only be separated under subparagraph (g)(4)(A) of § 47-2-123 if they are

separated by a reduction in force plan promulgated consistent with Merit System rules and regulations and approved by the State Merit System. This opinion only addresses involuntary separations under subparagraphs (g)(4)(A) and (g)(4)(B) of § 47-2-123. 1991 Op. Att'y Gen. 91-27.

Death benefits become vested at the time of the death; nothing done by the beneficiary after this event could change the benefits. 1971 Op. Att'y Gen. No. U71-99.

Death allowances equivalent to service retirement benefits. — Upon the death of an eligible employee while in service, the death allowances paid to the employee's beneficiary are the equivalent of service retirement benefits. 1979 Op. Att'y Gen. No. 79-34.

Prohibiting involuntary separation benefits to state employees unconstitutional. — An amendment to the Georgia Constitution prohibiting the grant of involuntary separation retirement benefits to state employees who are by law currently entitled to coverage under the involuntary separation benefits section of the Employees' Retirement System Act would, in all probability, be unconstitutional under the federal Impairment Clause contained in U.S. Const., Art. I, Sec. 10. 1983 Op. Att'y Gen. No. U83-72.

Separation by reason of reorganization. — Subparagraph (g)(4)(B) of O.C.G.A. § 47-2-123 cannot be read as creating authority for an additional means of separating

a classified employee via reorganization without going through the state personnel board's reduction-in-force procedure. 1991 Op. Att'y Gen. 91-22.

Loss of federal or state funds. — Under the procedural requirements of subsection (h) of O.C.G.A. § 47-2-123, an employer cannot be charged with the knowledge of a loss of funds until the employer was aware of the specific cuts to the specific agency's budget, and not merely aware of the overall statewide budget crisis. 1991 Op. Att'y Gen. 91-22.

Internal reassignment. — If an agency has identified another position in the agency which meets the four requirements of paragraph (h)(2) of O.C.G.A. § 47-2-123, it can simply offer to reassign an employee who would otherwise be terminated to the position without following the process of notification to the commissioner of personnel administration. 1997 Op. Att'y Gen. No. 97-17.

Reassignment from classified to unclassified service. — If an agency has identified another position in the agency which meets the four requirements of paragraph (h)(2) of O.C.G.A. § 47-2-123, but would entail reassignment of the employee from the classified service to the unclassified service, the unclassified position would be considered a comparable position. 1997 Op. Att'y Gen. No. 97-17.

RESEARCH REFERENCES

ALR. — Collateral source rule: injured person's receipt of statutory disability unem-

ployment benefits as affecting recovery against tort-feasor, 4 ALR3d 535.

47-2-123.1. Procedures to secure continued employment of employees subject to discretionary termination.

Repealed by Ga. L. 1984, p. 1296, § 4, effective January 1, 1985.

Editor's notes. — Ga. L. 1984, p. 1296, § 4, repealed this Code section. However, § 5 of that Act provided that the repeal would become effective on January 1, 1985, only if a proposed amendment (see Ga. L. 1984, p. 1726) to the Constitution (Ga. Const. 1983, Art. III, Sec. X, Para. VI) authorizing the General Assembly to revise provisions of public retirement or pension sys-

tems relating to involuntary separation from employment were ratified at the 1984 general election. Such approval was given at that election.

This Code section was enacted at the same legislative session as the Act which provided for its repeal. See Ga. L. 1984, p. 1309, § 1 for the enacting provisions.

47-2-124. Eligibility for benefits of persons with at least 95 percent of required service credit.

Any member who is serving in the year which represents 95 percent of the required time for vesting of benefits under Code Section 47-2-111 or 47-2-122 or of the required time for benefits under subsections (c) through (e) of Code Section 47-2-123 shall be deemed to qualify for the required number of years. (Ga. L. 1953, Nov.-Dec. Sess., p. 160, § 2; Ga. L. 1994, p. 297, § 1.)

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What constitutes actual required creditable service for death benefits. — Although Ga. L. 1967, p. 751, § 4 (see O.C.G.A. § 47-2-130) speaks in terms of 15 years of creditable service, the actual required creditable service for death benefits is 13 years and four months under the provisions of Ga. L. 1953, Nov.-Dec. Sess., p. 160, § 2 (see O.C.G.A. § 47-2-124). 1976 Op. Att’y Gen. No. U76-9.

Application of “95% rule” to O.C.G.A. § 47-2-122. — Question of how to apply the “95% rule” in O.C.G.A. § 47-2-124 to the vesting provisions of O.C.G.A. § 47-2-122

should be resolved by the Board of Trustees of the Employees Retirement System in light of the possible conflict with existing policies. 1992 Op. Att’y Gen. No. 92-24.

The 95% rule not applicable to § 47-2-111. — The 95% rule of O.C.G.A. § 47-2-124 does not apply to the calculation of retirement benefits under O.C.G.A. § 47-2-111, since by the statute’s plain language, § 47-2-124 only applies to the calculation of benefits pursuant to O.C.G.A. §§ 47-2-122 and 47-2-123. 1993 Op. Att’y Gen. No. 93-12 (issued prior to the 1994 amendment to this Code section).

47-2-125. Reexamination of persons receiving disability benefits; effect of refusal to undergo examination; effect of ability to engage in gainful employment.

(a)(1) Once each year during the first five years following the retirement of a member on a disability retirement allowance and once in every three-year period thereafter, the board of trustees may require a disability beneficiary who has not yet attained retirement age as specified in subsection (a) of Code Section 47-2-110 to undergo a medical examination by a physician or physicians designated by the medical board. The disability beneficiary may request such an examination. Should any disability beneficiary who has not yet attained retirement age refuse to submit to such medical examination, the pension of such disability beneficiary may be discontinued by the board of trustees until the withdrawal of such refusal; and should the refusal continue for one year, all rights of the disability beneficiary in and to a pension may be revoked by the board of trustees.

(2) Should the medical board report and certify to the board of trustees that a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between the disability beneficiary’s retirement allowance and the earnable compen-

sation used to calculate the disability retirement allowance at the time of retirement, the board of trustees may reduce the disability beneficiary's pension to an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement. Should the disability beneficiary's earning capacity be later changed, the amount of the pension may be further modified, provided that the modified pension shall not exceed an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement.

(3) The provisions of this paragraph shall apply to persons who first or again become members of this retirement system on or after September 1, 2010. For purposes of paragraph (2) of this subsection, the amount earnable by the beneficiary shall include any income payment received from workers' compensation; provided, however, that in the event of a lump sum payment, the monthly disability allowance shall be reduced on an actuarial basis as determined by the actuary of this retirement system.

(b) The board of trustees may require a disability beneficiary who has not yet attained retirement age as specified in subsection (a) of Code Section 47-2-110 to provide information relevant to any provision of this chapter relating to his or her entitlement to receive a disability retirement. Should any disability beneficiary who has not yet attained retirement age refuse to submit any such information so requested, the board of trustees may suspend the retirement allowance of such disability beneficiary until such information is provided. Should the board of trustees receive information from any source that a disability beneficiary is engaged in an occupation paying more than the difference between the disability beneficiary's retirement allowance and the earnable compensation used to calculate the disability retirement allowance at the time of retirement, the board of trustees may reduce the disability beneficiary's pension to an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement. Should the disability beneficiary's earnings later be changed, the amount of the pension may be further modified, provided that the modified pension shall not exceed an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement. (Ga. L. 1949, p. 138, § 5; Ga. L. 1992, p. 1108, § 1; Ga. L. 2005, p. 555, § 1/HB 459; Ga. L. 2010, p. 414, § 1/HB 172.)

The 2010 amendment, effective May 24, 2010, in subsection (a), designated the existing provisions as paragraphs (a)(1) and (a)(2); substituted “by a physician or” for “, such examination to be made at the disability

beneficiary’s place of residence or other place mutually agreed upon, by” near the end of the first sentence of paragraph (a)(1); and added paragraph (a)(3).

JUDICIAL DECISIONS

Legislature intended personal physical examination and not review of uncertified medical records or physician reports. *Cantrell v. State*, 129 Ga. App. 465, 200 S.E.2d 163 (1973), *aff’d*, 231 Ga. 704, 203

S.E.2d 493 (1974), overruled in part on other grounds, *Cantrell v. Board of Trustees of Employees’ Retirement Sys.*, 135 Ga. App. 445, 218 S.E.2d 97 (1975).

47-2-126. Restoration to service of disability beneficiary.

If a disability beneficiary is restored to service, the retirement allowance of the beneficiary shall cease and the beneficiary shall again become a contributing member of the retirement system. Anything in this chapter to the contrary notwithstanding, any prior service certificate or creditable service which was used to compute such a member’s creditable service at the time of retirement shall be restored to full force and effect, and upon the member’s subsequent retirement the member shall be credited with all service as a member. (Ga. L. 1949, p. 138, § 5; Ga. L. 1951, p. 394, § 7; Ga. L. 1990, p. 525, § 1.)

47-2-127. Applicable ages for computation of benefits; duration of benefits.

In the application of Code Sections 47-2-121, 47-2-123, 47-2-124, and subsection (d) of Code Section 47-2-120 to allowances, the monthly benefit of the member, whether dead or in life, or his beneficiary shall be computed as if the member attained age 60 or 65, whichever is applicable, and upon reaching that age applied for a retirement allowance. The monthly benefit so computed shall be payable for the life of the member or pursuant to the terms of the option, if any, selected by the member under Code Section 47-2-121. (Ga. L. 1957, p. 283, § 10.)

47-2-128. Survivors benefit coverage; fund; contributions.

(a) Wherever the term “survivors benefits” is used or referred to in this chapter, it shall be construed to be group term life insurance.

(b) Pursuant to the provisions of this Code section, Code Section 47-2-129, and rules or regulations adopted for such purpose, the board of trustees may provide for survivors benefits for members, former members, and retired members of the retirement system.

(c) Notwithstanding Article 3 of this chapter, there shall be established an additional fund, to be known as the “survivors benefit fund,” which shall be administered in the following manner:

(1) There shall be accumulated in the survivors benefit fund the contributions deducted from the earnable compensation of members covered for survivors benefits, together with payments made to the fund by employers, including interest earned on deposits and investments of such funds;

(2) There shall also be accumulated in the survivors benefit fund the payments required of retired members and vested former members covered for survivors benefits as provided in subsections (g) and (h) of this Code section, together with interest earned on such payments; and

(3) All assets of the survivors benefit fund and all income, interest, and dividends derived from deposits and investments shall be used for the payments of benefits and expenses necessary for the maintaining of survivors benefit coverage. Such benefits and expenses shall in no manner become an obligation of the pension accumulation fund.

(d) Contributions for survivors benefits shall be provided for and administered in the following manner:

(1) After notice from the board of trustees, each employer shall cause to be deducted from the earnable compensation of each member during every payroll period the additional amount established by the board of trustees, but not to exceed one-half of 1 percent of the member's earnable compensation. Such deductions shall be made under the same conditions as set forth in paragraph (2) of subsection (a) of Code Section 47-2-51 and, except for those members who are not eligible for survivors benefits, that amount shall be the member's payment for such coverage;

(2) Any member who is not eligible for survivors benefits shall have the additional contributions provided for in paragraph (1) of this subsection credited to the member's annuity savings account to be used to purchase an additional annuity at retirement under the conditions set forth in paragraph (3) of subsection (a) of Code Section 47-2-51; and

(3) There is authorized an employer payment to the fund which shall be a percentage of the earnable compensation of the members of the retirement system. The board of trustees shall establish the rate of such payment, but in no case shall such rate, when added to the members' contributions, exceed 1 percent. Funds for employer payment shall be requested in the same manner as provided in Code Section 47-2-57.

(e) The board of trustees may adopt or rescind any rules or regulations which are not in conflict with this Code section and which it deems necessary in establishing and maintaining the plan of operation, including benefit tables and other provisions of coverage. Such rules and regulations shall include the following:

(1) A member's payment for coverage shall vest in the member no rights other than for the period for which the member has paid the required additional contributions into the survivors benefit fund;

(2) A notice by the board of trustees to members through their employers that the additional contributions provided for in this Code section will in the future be credited to the individual member's annuity savings account under conditions set forth in paragraph (3) of subsection (a) of Code Section 47-2-51 shall suspend any and all survivors benefit coverage then in effect, provided that such action shall be applicable to all members alike and without prejudice to any survivors benefits pending in the case of a then deceased member; and

(3) Subsequent to any notice released under paragraph (2) of this subsection, any additional notice made in the same manner and within 12 months of the original notice to the effect that coverage is again available shall reestablish survivors benefits to those formerly covered and to all new members who are otherwise eligible, except that within 30 days from the date of such notice any member may decline benefits under this Code section.

(f) The board of trustees may determine the date on which the plan for survivors benefit coverage shall be placed into operation, provided that such date shall not be prior to July 1, 1953. The board of trustees shall notify all employers who, in turn, shall notify the members that additional contributions will commence on the determined date.

(g) Except as otherwise provided in subsection (i) of this Code section, in the event a member retires, the retired member shall continue paying the amount provided for under this Code section which the member was paying at the time of retirement; and the benefits provided for under this Code section shall remain fixed at the same amount as they would have been had the member died on the day immediately preceding the date of retirement. The board of trustees is authorized to promulgate rules and regulations to cover this subsection.

(h) Any other provisions of this chapter or any rules or regulations to the contrary notwithstanding, any member who withdraws from service before attaining age 60 but whose right to a service retirement allowance has vested under Code Section 47-2-122 may continue paying the amount under this Code section which the member was paying at the time of withdrawing from service, together with the amount of the employer contribution in effect at the time of such withdrawal, in which case the benefits under this Code section shall remain fixed at the same amount as they would have been had the member died on the day immediately preceding the member's withdrawal. Only those members with at least 18 years of creditable service at the time of withdrawal from service shall be eligible under this subsection. The board of trustees is authorized to promulgate rules and regulations to cover this subsection.

(i) As applied to those members whose first membership in the retirement system is on or after April 1, 1964, the survivors benefits program may

provide for a reduction of benefits after the attainment of a certain age and for a different or no contribution after retirement based on such reduction in benefits. (Ga. L. 1953, Jan.-Feb. Sess., p. 323, § 1; Ga. L. 1961, p. 158, §§ 1-3; Ga. L. 1964, p. 119, § 3; Ga. L. 1967, p. 751, §§ 5-7; Ga. L. 1976, p. 453, § 1; Ga. L. 1977, p. 670, § 1; Ga. L. 1979, p. 1259, § 1; Ga. L. 1990, p. 1263, § 1; Ga. L. 1993, p. 86, § 1.)

Law reviews. — For article surveying recent legislative and judicial developments regarding Georgia's insurance laws, see 31 Mercer L. Rev. 117 (1979).

JUDICIAL DECISIONS

Cited in Ross v. Odom, 401 F.2d 464 (5th Cir. 1968); Cantrell v. Board of Trustees of Employees' Retirement Sys., 135 Ga. App. 445, 218 S.E.2d 97 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Member may change life insurance beneficiaries at any time. — Any member of the retirement system covered under the life insurance provisions has the right, under Ga. L. 1949, p. 138 et seq. (see O.C.G.A. Ch. 2, T. 47) and the terms of the member's policy, to change the member's beneficiaries at any time, assuming there is no judicial decision or statutory prohibition to the contrary. 1977 Op. Att'y Gen. No. 77-18.

Cannot change life insurance beneficiaries by will. — Attempt by a member of the retirement system to change the member's beneficiary for the life insurance payment and the monthly retirement benefit by will is of no legal effect and should be considered a "mistake" in the construction of that

provision of the will. 1974 Op. Att'y Gen. No. 74-92.

Appellate judges serving on April 1, 1964 continue contributing same amount. — Justices on the Supreme Court of Georgia and Judges on the Court of Appeals of Georgia who were serving as appellate judges on April 1, 1964, are to be afforded group term life insurance protection (formerly survivor benefits) on the same basis as if the justice's had been members of the retirement system on January 1, 1953, or after, including the right to retain full life insurance coverage after retirement pursuant to the conditions in subsection (g) of this statute. 1977 Op. Att'y Gen. No. U77-20 (see O.C.G.A. § 47-2-128).

47-2-129. **Group term life insurance protection as part of survivors benefits program.**

The board of trustees may provide group term life insurance protection for the members of the retirement system as the survivors benefits program provided for in Code Section 47-2-128 by contracting for such service with the State Employees' Assurance Department or any insurance company licensed to operate in Georgia, which company has experience in the underwriting of groups similar in size and type of coverage. Such contract must provide benefits to those persons entitled to benefits under Code Section 47-2-128. All or any part of funds and other assets previously accumulated for the purposes of Code Section 47-2-128 may be used by the board of trustees in the execution of this contract. Contributions for such coverage shall be provided for and collected as set forth in subsection (d) of Code Section 47-2-128. (Ga. L. 1963, p. 520, § 1; Ga. L. 1967, p. 751, § 8; Ga. L. 1990, p. 1263, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Member may change life insurance beneficiaries at any time. — Any member of the retirement system covered under the life insurance provisions has the right, under Ga. L. 1949, p. 138 et seq. (see O.C.G.A. Ch.

2, T. 47) and the terms of the member's policy, to change the member's beneficiaries at any time, assuming there is no judicial decision or statutory prohibition to the contrary. 1977 Op. Att'y Gen. No. 77-18.

47-2-130. Refund of accumulated contributions upon termination of employment other than by death or retirement.

If a member ceases to be an employee other than by death or by retirement on an allowance under this retirement system, the amount of his accumulated contributions to this retirement system shall be payable to him upon his request. If a member dies before becoming eligible to retire and before completing 15 years of creditable service, the amount of his accumulated contributions shall be paid to the living person, if any, nominated by him by written designation duly executed and filed with the board of trustees, provided that such beneficiary is alive at the member's death. Otherwise, the accumulated contributions shall become part of the member's estate. (Ga. L. 1949, p. 138, § 5; Ga. L. 1951, p. 394, § 7; Ga. L. 1967, p. 751, § 4.)

OPINIONS OF THE ATTORNEY GENERAL

Employer's contribution to the retirement system may not be refunded if the employee resigns or is otherwise terminated during the employee's probationary period. 1974 Op. Att'y Gen. No. 74-55.

Appellate judge terminated prior to retirement may recover contributions. — If a judge is required to make contributions to the Superior Court Judges Retirement Fund of Georgia, the judge or the judge's estate may recover such contributions if the judge's service as an appellate court judge is terminated prior to the time that the judge is entitled to receive benefits under such retirement systems. 1976 Op. Att'y Gen. No. U76-9.

Retirement documents constructively delivered to trustees. — Retirement system has

delegated to the personnel offices of the various state agencies the apparent authority to disperse and accept retirement documents, to the point that when delivered by a member to his agency's personnel office, these documents are constructively filed with the board of trustees. 1973 Op. Att'y Gen. No. 73-179.

What constitutes actual required creditable service for death benefits. — Although Ga. L. 1967, p. 751, § 4 (see O.C.G.A. § 47-2-130) speaks in terms of 15 years of creditable service, the actual required creditable service for death benefits is 13 years and four months under the provisions of Ga. L. 1953, Nov-Dec. Sess., p. 160, § 2 (see O.C.G.A. § 47-2-124). 1976 Op. Att'y Gen. No. U76-9.

ARTICLE 8

PROVISIONS APPLICABLE TO PARTICULAR GROUPS OF
EMPLOYEES

OPINIONS OF THE ATTORNEY GENERAL

Retirement rights vest upon active service.

— Retirement rights become vested in the claimant immediately upon any participation in active service while the civil service provisions are in effect, irrespective of whether at the time in question the claimant has completed sufficient length of service to

be eligible for retirement as a matter of right; such rights cannot be constitutionally divested by any subsequent Act of the General Assembly. 1971 Op. Att'y Gen. No. 71-5 (rendered under Ga. L. 1949, p. 138, § 3, as amended).

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statute or ordinance providing for reduction of pension or retire-

ment benefit of public officer or employee because of independent income, 7 ALR2d 692.

PART 1

PERSONS EMPLOYED BY THE ARMED FORCES OF THE UNITED STATES AND
OTHER FEDERAL AGENCIES**47-2-140. Credit for transfer to a federal agency during a national emergency; retransfer to employment under retirement system; termination of federal employment.**

(a) Anything in this chapter to the contrary notwithstanding, an employer contribution shall be made on the account of a member who is transferred to a federal agency during a national emergency, provided that the transfer is made pursuant to an official request to the member for his services, together with a request that the employer release the member to perform national emergency services; and provided, further, that termination of the employment with the federal agency is for the purpose of returning to employment under the retirement system or entering the armed forces of the United States. This subsection shall be applicable only if certified copies of the official requests shall be filed with the retirement system at the time of transfer.

(b) Upon retransfer to employment under the retirement system, the member shall make a lump sum employee contribution through his employer to the retirement system for the period during which he was employed by the federal agency. Both this lump sum contribution and the employer contributions under subsection (a) of this Code section shall be the same as would have been contributed had the member remained in his former position and continued to make the same contributions as were

made in the last month before his transfer to the federal agency. The employer contribution shall be paid from the expense fund established under Code Section 47-2-60.

(c) Upon retransfer to employment under the retirement system and payment of the employee and employer contributions for the period during which he served in the federal agency, the member shall be treated, for purposes of receiving benefits under this chapter, as if he were employed under the retirement system during such time.

(d) A member who leaves service with a federal agency under conditions other than those set forth in subsection (a) of this Code section shall upon written request be eligible for refund of contributions made by him up to the time of his transfer. No further employer contributions shall be made on the account of such a member after such termination of service.

(e) Nothing in this Code section shall be construed as meaning that any individual affected thereby is in service until he returns to employment under the retirement system. (Ga. L. 1951, p. 394, § 3.)

47-2-141. Employer contributions for transfer to federal agency; accumulated pension credits; effect of failure to return to state employment.

(a) Anything in this chapter to the contrary notwithstanding, an employer contribution shall be made to the account of any member who during a national emergency enters or in time of peace is drafted into the armed forces of the United States directly from state employment or from employment in a federal agency after having been transferred to such agency from state employment under Code Section 47-2-140. The contribution shall be made by the employer for the period during which the member served in the armed forces of the United States and in the same amount as would have been contributed by the employer had the member remained in employment under the retirement system without change in compensation during that period, provided that such contribution shall be made for not more than five years of such period. Such contribution shall be paid into the pension accumulation fund as provided in Code Section 47-2-55.

(b) The employer contribution made on the member's account shall entitle him to the accumulated pension credits for such period only if within one year of his discharge he returns to employment under the retirement system or with the federal agency to which he was transferred pursuant to Code Section 47-2-140. If the member fails to return to such federal or state employment within one year of his discharge, his benefits under the retirement system shall be limited to his accumulated contributions at the time of his original transfer from state employment or entry into the armed forces of the United States, in which case his accumulated

contributions shall be refunded to him upon his written request, and no further employer contributions shall be made on his account after such one-year period.

(c) Nothing in this Code section shall be construed as meaning that any individual affected thereby is in service until such person returns to state employment. (Ga. L. 1951, p. 394, § 4; Ga. L. 1991, p. 1297, § 1.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

47-2-142. Credit for prior service rendered by persons transferred under loan to a federal agency but ineligible for federal service retirement membership or who served overseas with the Red Cross during World War II.

Repealed by Ga. L. 2010, p. 1207, § 19, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1949, p. 138, § 4; Ga. L. 1973, p. 1410, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 2009, p. 752, § 1/SB 98.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

PART 2

MEMBERS AND EMPLOYEES OF THE GENERAL ASSEMBLY

47-2-160. Inclusion of General Assembly members in retirement system; effect on rights under the Georgia Legislative Retirement System; rules and regulations; amount and financing of contributions.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 20, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1965, p. 106, § 3; Ga. L. 1965, p. 199, § 2; Ga. L. 1971, p. 109, § 1; Ga. L. 1972, p. 543, § 1; Ga. L. 1973, p. 95, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, re-

vive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-161. Membership service credit for service as a member of the General Assembly between January 1, 1954, and January 1, 1967.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 21, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1965, p. 106, § 2; Ga. L. 1965, p. 199, §§ 1, 4; Ga. L. 1968, p. 199, § 1; Ga. L. 1981, p. 1856, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-2-162. Eligibility of persons who are members of the General Assembly during or after January, 1962, for survivors benefits; contributions for such coverage; right to decline coverage.

(a) Beginning in January, 1962, current and future members of the General Assembly shall make contributions to the retirement system for the limited purpose of providing survivors benefits under Code Sections 47-2-128 and 47-2-129, provided that any member of the General Assembly may reject such coverage, in which case no contributions shall be made by him or her; provided, further, that the provisions of this Code section shall not apply to any person who becomes or again becomes a member of the General Assembly on or after July 1, 2009.

(b) If a member accepts such coverage, the legislative fiscal officer is authorized and directed to pay to the board of trustees from funds appropriated for the operation of the General Assembly all accumulated contributions for survivors benefits that would have been paid had members of the General Assembly received survivors benefits coverage when it was originally extended to members of the retirement system. (Ga. L. 1962, p. 54, § 3; Ga. L. 2009, p. 398, § 1/SB 177.)

The 2009 amendment, effective July 1, 2009, near the end of subsection (a), inserted “or her” and substituted “the provisions of this Code section shall not apply to any person who becomes or again becomes a member of the General Assembly on or after July 1, 2009” for “in the event of the death of any member of the 1962 General Assem-

bly prior to February 13, 1962, such member shall be deemed to have elected survivors benefits coverage, in which case any benefits payable shall be made to the deceased member’s surviving spouse and shall be paid from the sum of all contributions required under this Code section” at the end.

47-2-163. Group term life insurance for members and former members of General Assembly; contributions.

Any other provisions of this chapter to the contrary notwithstanding, the board of trustees is authorized by rules or regulations to provide for group term life insurance protection for members and former members of the General Assembly; provided, however, that the provisions of this Code section shall not be applicable to persons who become or again become members of the General Assembly on or after July 1, 2009. The board of trustees may contract for such coverage with the State Employees' Assurance Department pursuant to the provisions of Chapter 19 of this title. The board of trustees shall determine the amount of such coverage and the employee contribution that shall be made for such coverage by the members of the General Assembly. The board of trustees shall also determine the employer contribution necessary for such group term life insurance protection for members of the General Assembly. Such employer contribution shall be paid from funds appropriated or available to the legislative branch of the state government. The employee and employer contributions shall be paid into the survivors benefit fund provided for in subsection (c) of Code Section 47-2-128. (Ga. L. 1962, p. 54, § 6; Ga. L. 1982, p. 3, § 47; Ga. L. 1990, p. 1263, § 3; Ga. L. 2009, p. 398, § 2/SB 177.)

The 2009 amendment, effective July 1, 2009, added the proviso at the end of the first sentence.

JUDICIAL DECISIONS

Cited in *Ross v. Odom*, 401 F.2d 464 (5th Cir. 1968); *Cantrell v. Board of Trustees of Employees' Retirement Sys.*, 135 Ga. App. 445, 218 S.E.2d 97 (1975).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 319 et seq. 81A C.J.S., States, § 218.

47-2-164. Membership of employees of the General Assembly; contributions.

(a) Anything in this chapter to the contrary notwithstanding, any employee of the General Assembly who is in a position which normally requires actual performance of duties during the full 12 months of the calendar year, as reflected by the state auditor's report, shall, as a condition of his employment, become a member of the retirement system. Any contributing member who, without a break in service, becomes an employee of the General Assembly shall continue his membership during such employment.

(b) Contributions from employees of the General Assembly shall be deducted by the legislative fiscal officer and remitted to the board of trustees, together with required employer contributions. The legislative fiscal officer is authorized and directed to pay the employer contribution from the funds appropriated for the operation of the General Assembly.

(c) This Code section shall become effective on February 13, 1956, so as to apply to the 1956 regular term and all subsequent terms of the General Assembly. (Ga. L. 1956, p. 54, § 3.)

47-2-165. Effect on retirement allowances of compensation, per diem, allowances, and expenses received as a member of the General Assembly.

Anything in this chapter to the contrary notwithstanding, the payment of a member's retirement allowances shall not be suspended because of the compensation, per diem, allowances, and expenses received by him as an elected member of the General Assembly. (Ga. L. 1963, p. 547, § 2.)

47-2-166 through 47-2-168.

Repealed by Ga. L. 2010, p. 1207, §§ 22 through 24, effective July 1, 2010.

Editor's notes. — These Code sections were based on Ga. L. 1964, p. 158, § 2; Ga. L. 1967, p. 495, § 1; Ga. L. 1973, p. 95, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

PART 3

TEACHERS AND MEMBERS OF THE TEACHERS RETIREMENT SYSTEM OF GEORGIA

47-2-180. Right to a prior service certificate for service as a teacher in the public schools of Georgia; contents of application for a certificate.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 25, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1949, p. 138, § 4.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and

inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, op-

tion, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-181. Transfer of service credits and accumulated contributions from the Teachers Retirement System of Georgia to this retirement system.

(a) Any other provisions of law to the contrary notwithstanding, any member, except a member subject to subsection (b) of this Code section, who was previously a member of the Teachers Retirement System of Georgia who has service credits with said teachers retirement system may have such service credits and accumulated contributions under said teachers retirement system transferred to the Employees' Retirement System of Georgia, provided that such transferred service credits shall not be used in determining the qualifications of a member for benefits other than vested rights or disability, death, or normal service retirement allowances. The Teachers Retirement System of Georgia shall pay an employer contribution together with regular interest thereon to the Employees' Retirement System of Georgia for each member establishing creditable service under this subsection. The amount of such employer contributions shall be 6 percent of the reported compensation of the member establishing creditable service during membership in the Teachers Retirement System of Georgia. Any member who elects to transfer such service credits shall so notify the board of trustees in writing.

(b) Pursuant to Code Section 47-3-81, any employee of an agency under the retirement system may transfer his or her service credit to the credit of his or her membership in the Teachers Retirement System of Georgia in the event that he or she enters service as a teacher, as defined in Code Section 47-3-1.

(c)(1) Any provision of this title to the contrary notwithstanding, any vested member of the Teachers Retirement System who becomes an employee of an employer may, at his or her option, elect to remain a member of the Teachers Retirement System of Georgia.

(2) If a person subject to this subsection elects to remain a member of the Teachers Retirement System of Georgia, the employer and employee shall make all contributions to such retirement system and perform such other acts as are required by law or regulation.

(3) If a person subject to this subsection does not elect to remain a member of the Teachers Retirement System of Georgia, he or she shall become a member of this retirement system subject to all provisions of this chapter.

(4) This subsection shall be applicable to each person who was a member of this retirement system on January 1, 1997, and to all persons who become a member on or after such date. Any person subject to this subsection who became a member of the Teachers Retirement System of Georgia between January 1, 1997, and June 30, 1998, who elects to remain a member of this retirement system shall be governed by the provisions of subsection (a) of this Code section relating to the transfer of service credits and accumulated contributions. Any person eligible to make the election provided for in this subsection shall do so in writing to the board of trustees not later than September 30, 2000, or within 60 days after the person became an employee of an employer, whichever date is later. Once made, the election is irrevocable.

(5) The provisions of this subsection shall not become a part of the employment contract and shall be subject to subsequent legislation; provided, however, that no person who has made the election provided by this subsection shall be affected by any subsequent legislation. (Ga. L. 1962, p. 54, § 8; Ga. L. 1968, p. 1407, § 2; Ga. L. 1973, p. 900, § 10; Ga. L. 1982, p. 3, § 47; Ga. L. 1992, p. 1110, § 2; Ga. L. 1998, p. 775, § 1; Ga. L. 2000, p. 1273, § 1.)

RESEARCH REFERENCES

ALR. — Services included in computing seniority, salary, tenure, or retirement benefit period of service for purpose of teachers' fits, 56 ALR5th 493.

47-2-182. Credit for service to certain members of local retirement systems.

(a) As used in this Code section, the term:

(1) "Local retirement system" means a retirement system maintained by a county or independent school district for the purpose of providing a retirement benefit program for the teachers and other employees of the county or independent school district.

(2) "Teacher" means a teacher as defined in paragraph (28) of Code Section 47-3-1.

(b) Any member who was employed by a county or independent school district as a teacher at any time prior to July 1, 1979, and who was a member of a local retirement system during such employment and who is not and will not become eligible to receive any benefit under the provisions of said local retirement system shall be eligible to obtain creditable service under this retirement system for any part or all of such previous employment as a teacher, subject to the following conditions and requirements:

(1) The member must pay to the board of trustees employee and employer contributions for the creditable service claimed under this Code section based on the compensation actually received for the teaching service claimed as creditable service;

(2) The member must pay to the board of trustees regular interest on the amount determined under paragraph (1) of this subsection compounded annually from the time the teaching service was rendered until the time of payment; and

(3) No creditable service obtained under this Code section shall be used in determining the qualifications of a member to receive benefits under this chapter other than vested rights, death or disability benefits, or normal service retirement allowances.

(c) Any member wishing to obtain creditable service pursuant to the provisions of this Code section shall apply therefor to the board of trustees in such manner as the board shall require. The board of trustees may require such documentation as may be necessary to verify teaching service and compensation therefor that is claimed as creditable service under this Code section. (Code 1981, § 47-2-182, enacted by Ga. L. 1990, p. 508, § 1.)

RESEARCH REFERENCES

ALR. — Services included in computing seniority, salary, tenure, or retirement benefits, 56 ALR5th 493.

PART 3.1

TRANSFER OF SERVICE CREDITS FROM PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM

47-2-190. Transfer to Employees' Retirement System of Georgia prohibited.

Any member who has service credits with the Public School Employees Retirement System may not have any such service credits transferred to the Employees' Retirement System of Georgia. (Code 1981, § 47-2-190, enacted by Ga. L. 1987, p. 575, § 7.)

PART 4

EMPLOYEES OF CERTAIN STATE DEPARTMENTS

47-2-200. Membership of heads of state departments or agencies who are constitutional officers; contributions; service credits; retirement allowances; survivors benefits.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 26, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1964, p. 115, § 3.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and

inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, op-

tion, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-2-201. Director status inhibiting eligibility for corresponding emeritus positions.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 27, effective July 1, 2010.

Editor’s notes. — This Code section was based on Ga. L. 1964, p. 115, § 4; Ga. L. 1986, p. 999, § 1; Ga. L. 1994, p. 92, § 1; Ga. L. 2010, p. 863, § 3.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-2-202. Eligibility for membership of officials and employees of the Department of Audits and Accounts; contributions.

The officials and employees of the Department of Audits and Accounts who are subject to the merit system of employment promulgated by the department are authorized to become members of the retirement system; and that department is authorized to pay all required contributions from funds appropriated for the operation of that department. Such payment shall be part of and in addition to the regular compensation allowed to the officials and employees of that department. (Ga. L. 1949, p. 1195, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182, 1197 et seq.

47-2-203. Membership of certain employees of the Administrative Office of the Courts of the Judicial Council of Georgia and the Council of Juvenile Court Judges; contributions.

(a) On and after July 1, 1990, the following shall be members of the retirement system:

(1) The director of the Administrative Office of the Courts of the Judicial Council of Georgia and any other person employed by the Administrative Office of the Courts or the Judicial Council of Georgia

who is in a position which normally requires actual performance of duties during the full 12 months of the calendar year; and

(2) The director of the Council of Juvenile Court Judges and any other person employed by the Council of Juvenile Court Judges who is in a position which normally requires actual performance of duties during the full 12 months of the calendar year.

(b) Membership under this Code section shall be subject to the provisions of Code Section 47-2-334, relating to persons becoming members of the retirement system on or after July 1, 1982.

(c) Employee contributions from members under this Code section for service on and after July 1, 1990, shall be deducted and remitted to the board of trustees by the appropriate employing authority. Employer contributions under this Code section for service on and after July 1, 1990, shall be payable from funds appropriated for the operation of the judicial branch of government; and such employer contributions shall be in addition to the regular compensation otherwise payable to such members. (Code 1981, § 47-2-203, enacted by Ga. L. 1990, p. 514, § 1.)

47-2-204. Members subject to provisions of Code Section 47-2-203 may receive credit for prior service.

Any member subject to the provisions of Code Section 47-2-203 may receive service credit for all prior service rendered as an employee of the Judicial Council of Georgia or its predecessor agency, the Governor's Commission on Judicial Processes, or the Council of Juvenile Court Judges, provided that:

(1) Such members shall pay a contribution of 1 1/2 percent per year on compensation received for each such year plus 4 1/2 percent interest on such employee contributions, compounded annually to the date of payment; and

(2) An amount shall be paid to the retirement system from funds appropriated or otherwise available for the operation of the judicial branch of state government in an amount equal to the normal employer contribution which would have been paid on behalf of the member if the member had been a member of the retirement system during the period for which service is granted plus 4 1/2 percent interest on such employer contributions, compounded annually to the date of payment;

and provided, further, that no such service shall be deemed as creditable under any provisions of this chapter if such service has or will be used in the determination of any member's eligibility for his retirement benefits or allowances for any other retirement system, excluding social security and those retirement programs covered under Public Law 810, 80th Congress, as amended. Any member claiming creditable service under this subsection

shall make application to the board not later than June 30, 1993. (Code 1981, § 47-2-204, enacted by Ga. L. 1992, p. 1151, § 1.)

PART 5

CERTAIN LAW ENFORCEMENT PERSONNEL

47-2-220. Membership in retirement system of employees of the Department of Corrections; contributions; creditable service; eligibility for survivors benefits.

(a) On and after March 7, 1961, the eligible employees of the Department of Corrections are authorized to become members of Division A within the retirement system.

(b) The Department of Corrections or such official therein who is responsible for the payment of compensation to the employees within that department shall cause to be deducted from the compensation of each member for each and every payroll period the employee contributions as may be required under this chapter and shall pay to the board of trustees, in such manner as the board of trustees may prescribe, the amounts so deducted. The commissioner of corrections is authorized and directed to pay such employer contributions as may be required under this chapter. Such employer contributions shall be paid to the board of trustees, as prescribed by it, from funds appropriated for the operation of the Department of Corrections.

(c) In addition to the regular employer contributions required under this chapter, the commissioner of corrections is authorized and directed to pay, from funds received by the Department of Corrections as compensation for the various services rendered by it, an additional contribution as determined by the board of trustees. The additional contribution shall be a regular quarterly amount sufficient to amortize within 15 years the total amount of the employer contributions which would have been paid for all of that department's employees from August 1, 1953, to July 1, 1961, and shall include interest on these employer contributions at a rate prescribed by the board of trustees. These quarterly payments shall begin on July 1, 1961. In the event the earnings of the department are not sufficient to pay such contributions, the contributions shall be paid from funds available to the department from appropriations, or otherwise. If the contributions are not made as provided in this Code section, this Code section shall be null and void.

(d) Any individual who is an employee of the Department of Corrections on March 7, 1961, may become a member of Division A of the retirement system; but he shall not be considered as eligible for any service credits whatsoever other than membership service for which he contributes.

(e) Any individual who on August 1, 1953, was an employee of the Department of Corrections and without a break in service with that department so remained in the employment of that department on March 7, 1961, and who has not previously declined membership in the retirement system shall, upon becoming a member of the retirement system and upon immediate payment by the member of the total amount of accumulated contributions which would have accrued had he been a contributing member since August 1, 1953, be entitled to all creditable service in the same manner as other individuals in that department who became members of Division A of the retirement system.

(f) Any eligible employee of the Department of Corrections who became a member of the retirement system under subsection (d) of this Code section and who did not immediately pay the full amount of those accumulated contributions may pay the amount of his accumulated contributions over a ten-year period by means of monthly payments. No individual shall be credited with the full amount of his prior service or membership service credits until such time as he has made the total contributions required of him. The board of trustees may promulgate rules and regulations to implement this Code section, including a prescription of the actuarial value which shall be credited to the member's account for each monthly payment made as herein provided if he should retire, die, or become disabled before having paid the full amount of the accumulated contributions required of him under subsection (e) of this Code section. The board of trustees may establish a date for the commencement for such payments, which date shall be no earlier than July 1, 1962.

(g) Anything in this chapter to the contrary notwithstanding, employees of the Department of Corrections who become members of the retirement system shall be eligible for survivors benefits in accordance with the rules and regulations relative to the same which were in existence on July 1, 1953, provided that any determination relative to the member's eligibility for such benefits shall also be based upon the age of the member on the date he elects membership, notwithstanding the fact that he may have been an employee of the department on January 1, 1953. (Ga. L. 1961, p. 112, § 1; Ga. L. 1962, p. 146, §§ 1, 2; Ga. L. 1982, p. 3, § 47; Ga. L. 1985, p. 283, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Additional contribution required for all past employees between 1953 and 1961. — Words “all of that department's employees” in subsection (c) of this statute include all eligible employees who were on the department's payroll the entire period from August 1, 1953 to July 1, 1961, and also any employees who were on the payroll for any part of the period from August 1, 1953 to July 1,

1961. 1960-61 Op. Att'y Gen. p. 321 (see O.C.G.A. § 47-2-220).

Words “would have been paid” in subsection (c) of this statute implies the exclusion of all employees upon whom an employer's contribution has already been paid. 1960-61 Op. Att'y Gen. p. 321 (see O.C.G.A. § 47-2-220).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1167 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 313 et seq. 81A C.J.S., States, § 216.

47-2-221. Disability allowances payable to personnel for certain disabilities arising in the line of duty.

(a)(1) Notwithstanding the disability allowance provided for in Code Section 47-2-123, any member in service of the Uniform Division of the Department of Public Safety, any conservation ranger of the Department of Natural Resources, any officer or agent of the Georgia Bureau of Investigation, and any alcohol and tobacco officer or agent of the Department of Revenue who, while a contributing member of this retirement system and upon becoming permanently disabled due to an act of external violence or injury incurred in line of duty, becomes eligible for disability retirement allowances shall, upon making written application to the board of trustees either personally or through his or her employer and after a medical examination and upon certification by the medical board that such member is, in their opinion, permanently disabled, be entitled to a monthly allowance as computed on the member's life expectancy without option. Such monthly allowance as shall be payable to the member only, during his or her life or length of disability, shall not exceed 80 percent of the service allowance that would have been payable to the member had he accumulated not more than 30 years of creditable service and had retired at age 65. Such allowance shall be computed on the basis of the member's monthly earnable compensation for the month in which his or her permanent disability occurred. Such permanent disability retirement shall apply regardless of the length of service of any such member; and such member shall be deemed to have acquired 30 or more years of creditable service. In addition, a member so disabled in the line of duty shall receive a monthly supplemental benefit which shall be in the amount of \$5.00 per month for each year of creditable service as a member of the Uniform Division of the Department of Public Safety, conservation ranger of the Department of Natural Resources, alcohol and tobacco officer or agent of the Department of Revenue, or as an officer or agent of the Georgia Bureau of Investigation. Such additional monthly supplemental benefit shall in no event exceed \$150.00 per month. Any other provision of law to the contrary notwithstanding, any member of the Uniform Division of the Department of Public Safety who retired prior to July 1, 1970, as a result of becoming permanently disabled due to an act of external violence or injury incurred in the line of duty and who was a member of the retirement system on the date of the injury or act of violence shall be entitled to and shall receive the monthly supplemental benefit provided for in this subsection.

(2) In lieu of the foregoing, any member so disabled in the line of duty shall be entitled to receive a minimum monthly disability retirement benefit equal to 2 percent of his or her monthly earnable compensation for the month in which his or her permanent disability occurred for each year of creditable service determined as though he or she had continued in service in the Uniform Division of the Department of Public Safety, as a conservation ranger of the Department of Natural Resources, as an alcohol and tobacco officer or agent of the Department of Revenue, or as an officer or agent of the Georgia Bureau of Investigation until his or her mandatory retirement age.

(b)(1) Notwithstanding the disability allowance provided for in Code Section 47-2-123, any employee of the Department of Natural Resources appointed as a deputy conservation ranger under Code Section 27-1-17, any parole officer employed by the State Board of Pardons and Paroles, and any probation officer employed by the Department of Corrections who, while a contributing member of this retirement system and upon becoming permanently disabled due to an act of external violence or injury incurred in the line of law enforcement duty, becomes eligible for disability retirement allowances shall, after a medical examination and upon certification by the medical board that such member is, in their opinion, permanently disabled, be entitled to a monthly allowance as computed on the member's life expectancy without option. Such monthly allowance as shall be payable to the member only, during his or her life or length of disability, shall not exceed 80 percent of the service allowance that would have been payable to the member had he or she accumulated not more than 30 years of creditable service and had retired at age 65. Such allowance shall be computed on the basis of the member's monthly earnable compensation for the month in which his or her permanent disability occurred. Such permanent disability retirement shall apply regardless of the length of service of any such member; and such member shall be deemed to have acquired 30 or more years of creditable service. In addition, a member so disabled in the line of law enforcement duty shall receive a monthly supplemental benefit which shall be in the amount of \$5.00 per month for each year of creditable service as an employee of the Department of Natural Resources who has been appointed as a deputy conservation ranger under Code Section 27-1-17, parole officer of the State Board of Pardons and Paroles, or probation officer of the Department of Corrections. Such additional monthly supplemental benefit shall in no event exceed \$150.00 per month.

(2) In lieu of the foregoing, any member so disabled in the line of law enforcement duty shall be entitled to receive a minimum monthly disability retirement benefit equal to 2 percent of his or her monthly earnable compensation for the month in which his or her permanent disability occurred for each year of creditable service determined as

though he or she had continued in service as a deputy conservation ranger, probation officer, or parole officer until his or her mandatory retirement age. (Ga. L. 1962, p. 152, § 1; Ga. L. 1968, p. 1361, § 1; Ga. L. 1970, p. 26, § 2; Ga. L. 1971, p. 685, § 1; Ga. L. 1975, p. 1499, § 1; Ga. L. 1976, p. 1407, § 1; Ga. L. 1977, p. 1096, § 2; Ga. L. 1982, p. 3, § 47; Ga. L. 1998, p. 230, § 1; Ga. L. 2005, p. 555, § 2/HB 459.)

OPINIONS OF THE ATTORNEY GENERAL

The 1977 amendment to subsection (a) of O.C.G.A. § 47-2-221 was intended to entitle all otherwise eligible persons who retired prior to July 1, 1970, as the result of a permanent disability incurred in the line of duty and who were Employees' Retirement

System members when so injured, to the monthly supplemental benefits and was not intended to be limited to those entitled to such benefits under the 1968 amendment to § 47-2-221. 1983 Op. Att'y Gen. No. U83-28.

47-2-222. Power to increase liability contribution rates for certain departments or agencies; transfer of employees.

Any other provisions of law to the contrary notwithstanding, the board of trustees may increase the normal and accrued liability employer contribution rates of the Department of Public Safety, the Department of Natural Resources, the Department of Revenue, the Georgia Bureau of Investigation, the Department of Corrections, the State Board of Pardons and Paroles, and any other agency or authority to an amount set by the board of trustees as actuarially sufficient to fund the employer's cost of the benefits provided in this chapter for groups of employees of such departments or agencies. In the event any group of employees of any of such departments or agencies is transferred to the administration of any other department or agency, that department or agency shall continue to pay the normal and accrued liability contributions on behalf of such employees at the rate set by the board of trustees. (Ga. L. 1970, p. 26, § 1; Ga. L. 1973, p. 900, § 10; Ga. L. 1974, p. 1210, § 1; Ga. L. 1991, p. 358, § 1; Ga. L. 2009, p. 322, § 3/HB 476; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2009, in the first sentence, deleted "and" following "Resources," and inserted ", the Georgia Bureau of Investigation, the Department of Corrections, the State Board of Pardons and Paroles, and any other agency or authority" in the middle.

The 2010 amendment, effective July 1, 2010, substituted "such departments or agencies" for "such departments" twice.

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in

Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted

at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

47-2-223. Retirement benefits for those in service in Uniform Division of the Department of Public Safety.

(a) For purposes of this Code section, the term "highest average compensation" means the member's highest average monthly earnable compensation during a period of 24 consecutive calendar months while a member of the retirement system.

(b) Anything in this chapter to the contrary notwithstanding, every person who is in service in the Uniform Division of the Department of Public Safety as an officer, noncommissioned officer, or trooper, or as an officer or agent of the Georgia Bureau of Investigation on June 30, 1970, and every person who enters or reenters such service on or after July 1, 1970, may retire at any time after attaining the age of 55 and upon retirement such retiree shall receive the regular retirement benefits under this chapter, provided that he or she shall in any case receive a minimum monthly retirement benefit equal to 2 percent of his or her highest average compensation for each year of creditable service by filing an application therefor in a manner similar to that provided in Code Section 47-2-110. (Ga. L. 1949, p. 138, § 15; Ga. L. 1970, p. 26, § 3; Ga. L. 1971, p. 685, § 2; Ga. L. 1978, p. 1440, § 1; Ga. L. 1997, p. 555, § 1; Ga. L. 1998, p. 1104, § 2.)

JUDICIAL DECISIONS

Consistent with federal retirement legislation. — O.C.G.A. § 47-2-223 is not a "subterfuge" within the meaning of the Age Discrimination in Employment Act of 1967 (ADEA), § 4(j)(2), 29 U.S.C. § 623(j)(2), and thus is exempt under § 4(j) from the ADEA's general ban on mandatory retirement rules. Accordingly, the state trooper's forced retirement was valid. *Knight v. Georgia*, 992 F.2d 1541 (11th Cir. 1993).

Employee not entitled to early retirement. — Because an employee of the Georgia

Peace Officer Standards and Training Council was never in the service of the Uniform Division of the Georgia Department of Public Safety, an early retirement plan under O.C.G.A. § 47-2-223(b) was never part of the employee's contract of employment; therefore, the trial court erred by granting the employee's motion for summary judgment. *Employees' Ret. Sys. of Ga. v. Melton*, 294 Ga. App. 634, 669 S.E.2d 692 (2008), cert. denied, No. S09C0459, 2009 Ga. LEXIS 190 (Ga. 2009).

OPINIONS OF THE ATTORNEY GENERAL

Mandatory retirement age may not be waived. — An agent of the Georgia Bureau of Investigation who has completed 25 years of creditable service towards retirement and who has reached the mandatory age limitation may not have the mandatory age restric-

tion waived by the commissioner of public safety. 1972 Op. Att'y Gen. No. 72-155.

Effect of § 47-2-111. — O.C.G.A. § 47-2-111, enacted in 1993, will allow an agent of the Georgia Bureau of Investigation who is eligible for involuntary separation

retirement benefits to elect retirement or to continue the agent's employment past the age of 55 and be entitled to the same projection in age and service which would

have been available when that agent was required to retire at age 55 by operation of law. 1993 Op. Att'y Gen. No. 93-12.

RESEARCH REFERENCES

ALR. — Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.

47-2-224. Mandatory retirement age and monthly retirement benefits for certain members of the Department of Natural Resources and of the Department of Revenue; waiver of mandatory retirement age.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 28, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1974, p. 1210, § 2; Ga. L. 1976, p. 1407, § 2; Ga. L. 1976, p. 1459, § 1; Ga. L. 1978, p. 1463, §§ 1, 2; Ga. L. 1982, p. 3, § 47.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, re-

vive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-225. Creditable service for members with prior service as narcotics agents; membership in retirement system of members who were employed as narcotics agents.

Any other provision of this chapter to the contrary notwithstanding, any member who was employed as a narcotics agent pursuant to the provisions of Code Section 35-3-9 prior to becoming a member of the retirement system shall be entitled to obtain creditable service for all such prior service subject to the conditions contained in this Code section. In order to be eligible for such creditable service, the member must make application as prescribed by the board not later than July 1, 1997, or one year after becoming a member of the retirement system, whichever date is later, provide proof of such prior service, and pay the employee contributions which he or she would have paid if he or she had been a member of the retirement system, together with regular interest thereon. Within 30 days after the retirement system gives notice that the foregoing conditions have been met, the Georgia Bureau of Investigation shall pay the employer contributions which would have been paid for the member if he or she had been a member of the retirement system, together with regular interest thereon. (Code 1981, § 47-2-225, enacted by Ga. L. 1996, p. 722, § 1.)

PART 6

JUSTICES OF THE SUPREME COURT, JUDGES OF THE COURT OF APPEALS,
AND THEIR EMPLOYEES**47-2-240. Membership in retirement system of Justices of Supreme Court; appointment to Justice Emeritus of Supreme Court; contributions; creditable service; survivors benefits.**

For purposes of this Code section, the terms "Justice Emeritus of the Supreme Court" and "Justice Emeritus" mean both Chief Justice Emeritus and Associate Justice Emeritus, and the term "Justice" means both Chief Justice of the Supreme Court and Associate Justice of the Supreme Court. The provisions of this or any other law to the contrary notwithstanding, any person who becomes a Justice of the Supreme Court after April 1, 1964, shall be a member of the retirement system and shall not be eligible for appointment as Justice Emeritus of the Supreme Court. The prohibition against appointment as Justice Emeritus shall not apply to any person holding either the office of Justice of the Supreme Court or Judge of the Court of Appeals on April 1, 1964. Any person serving as Justice of the Supreme Court on that date must notify the director of the Employees' Retirement System of Georgia on or before March 31, 1965, if he desires to become a member of the retirement system and shall otherwise be ineligible for membership. No Justice of the Supreme Court shall be allowed to rescind notification nor shall he be allowed to give notification after March 31, 1965. Any Justice of the Supreme Court who becomes a member of the retirement system shall, upon the effective date of his membership, begin making regular employee contributions under this chapter and shall be entitled to all the retirement allowances and credits under this chapter in the same manner as if he had become a member of the retirement system on January 1, 1950, which credits shall include credit for prior service and any services performed by him as an employee subsequent to that date. All employer contributions which would have been reported for the Justices of the Supreme Court between January 1, 1950, and April 1, 1964, shall be paid by the employer into the pension accumulation fund in such manner and over such period of time as shall be agreed upon between the board of trustees and the employer. Eligibility for survivors benefits under Code Section 47-2-128 for a present Justice of the Supreme Court shall be determined on the same basis as that applicable to all other members who were in state employment on or after January 1, 1953, and benefit amounts shall be based upon the age of the Justice on the effective date of his membership. Eligibility for survivors benefits for any person who enters on duty as a Justice after April 1, 1964, shall be determined in the same manner as for any other new member of the retirement system. (Ga. L. 1970, p. 179, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Appellate judge retains right to be appointed senior judge. — If an appellate court judge were to become a member of the retirement system, the judge could assume the office of Judge of the Georgia Court of Appeals or Justice of the Georgia Supreme Court and still retain the judge's right to be appointed as judge of the superior courts emeritus (now senior judge) at the conclusion of the judge's service on either appellate court. 1976 Op. Att'y Gen. No. U76-9.

Appellate judges serving in 1964 continue contributing same amount. — Justices on the

Supreme Court of Georgia and Judges on the Court of Appeals of Georgia who were serving as appellate judges on April 1, 1964, are to be afforded group term life insurance protection (formerly survivor benefits) on the same basis as if the judges had been members of the retirement system on January 1, 1953, or after, including the right to retain full life insurance coverage after retirement pursuant to the conditions in Ga. L. 1977, p. 670, § 1 (see O.C.G.A. § 47-2-128(g)). 1977 Op. Att'y Gen. No. U77-20.

47-2-241. Membership in retirement system of Judges of Court of Appeals; appointment to Judge Emeritus of Court of Appeals; contributions; creditable service; survivors benefits.

The provisions of this or any other law to the contrary notwithstanding, any person who becomes a Judge of the Court of Appeals after April 1, 1964, shall be a member of the retirement system and shall not be eligible for appointment as Judge Emeritus of the Court of Appeals. The prohibition against such appointment shall not apply to any person holding the office of Judge of the Court of Appeals on April 1, 1964. Any person serving as Judge of the Court of Appeals on that date must notify the director of the Employees' Retirement System of Georgia on or before March 31, 1965, if he desires to become a member of the retirement system and shall otherwise be ineligible for membership. No Judge of the Court of Appeals shall be allowed to rescind notification nor shall he be allowed to give notification after March 31, 1965. Any Judge of the Court of Appeals who becomes a member of the retirement system shall, upon the effective date of his membership, begin making regular employee contributions under this chapter and shall be entitled to all retirement allowances and credits under this chapter in the same manner as if he had become a member of the retirement system on January 1, 1950, which credits shall include credit for prior service and any services performed by him as an employee subsequent to that date. All employer contributions which would have been reported for the Judges of the Court of Appeals between January 1, 1950, and April 1, 1964, shall be paid by the employer into the pension accumulation fund in such manner and over such period of time as shall be agreed upon between the board of trustees and the employer. Eligibility for survivors benefits under Code Section 47-2-128 shall be determined on the same basis as that applicable to all other members who were in state employment on or after January 1, 1953. The amounts of any survivors benefits payable shall be based upon the age of the Judge of the Court of Appeals on the effective date of his membership with the retirement system.

Eligibility for survivors benefits for any person who enters on duty as a Judge of the Court of Appeals after April 1, 1964, shall be determined in the same manner as for any other new member of the retirement system. (Ga. L. 1964, p. 115, § 1.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

OPINIONS OF THE ATTORNEY GENERAL

Appellate judge retains right to be appointed senior judge. — If an appellate court judge were to become a member of the retirement system, the judge could assume the office of Judge of the Georgia Court of Appeals or Justice of the Georgia Supreme Court and still retain the judge's right to be appointed as judge of the superior courts emeritus (now senior judge) at the conclusion of the judge's service on either appellate court. 1976 Op. Att'y Gen. No. U76-9.

Appellate judges serving in 1964 continue contributing same amount. — Justices on the

Supreme Court of Georgia and Judges on the Court of Appeals of Georgia, who were serving as appellate judges on April 1, 1964, are to be afforded group term insurance protection (formerly survivor benefits) on the same basis as if the judges had been members of the retirement system on January 1, 1953, or after, including the right to retain full life insurance coverage after retirement pursuant to the conditions in Ga. L. 1977, p. 670, § 1 (see O.C.G.A. § 47-2-128(g)). 1977 Op. Att'y Gen. No. U77-20.

47-2-242. Merit system of personnel administration for officers and employees of the Supreme Court; membership in retirement system; contributions.

All eligible officers and employees of the Supreme Court, except the Justices, shall be subject to a merit system of personnel administration as promulgated by the Supreme Court, under which all such officers and employees shall be selected on a basis of merit, fitness, and efficiency. All such officers and employees are authorized to become members of the retirement system. All contributions required by this chapter shall be paid from funds appropriated for the operation of the Supreme Court and all such payments shall be in addition to the regular compensation allowed to such officers and employees. (Ga. L. 1952, p. 229, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182, 1197 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 161, 316 et seq.

47-2-243. Merit system of personnel administration for officers and employees of the Court of Appeals; membership in retirement system; contributions.

All eligible officers and employees of the Court of Appeals, except the judges of that court, shall be subject to a merit system of personnel administration as promulgated by the Court of Appeals, under which all such officers and employees shall be selected on a basis of merit, fitness, and efficiency. All such officers and employees are authorized to become members of the retirement system. All contributions required by this chapter shall be paid from funds appropriated for the operation of the Court of Appeals and all such payments shall be in addition to the regular compensation allowed to such officers and employees. (Ga. L. 1952, p. 248, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182, 1197 et seq. **C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 161, 316 et seq.

47-2-244. Optional benefits available to appellate court judges; notice of election of benefits; eligibility for benefits; disability benefits; survivors benefits.

(a) The term “appellate court judge,” as used in this Code section, shall mean any Judge, Presiding Judge, or Chief Judge of the Court of Appeals and any Associate Justice, Presiding Justice, or Chief Justice of the Supreme Court.

(b) Any other provision of law to the contrary notwithstanding, any appellate court judge shall be entitled to receive the benefits under this Code section in lieu of any retirement allowances otherwise available under this retirement system and in lieu of the appointment to or the holding of any emeritus office.

(c) Any appellate court judge who seeks benefits under this Code section shall tender to the board of trustees before January 1, 1972, or within 60 days after the commencement of such judge’s term of office, whichever shall occur later, a written notice stating that the judge has elected to accept such benefits in lieu of any retirement allowances otherwise available under this retirement system and in lieu of the appointment to and the holding of any emeritus office. The notice shall state that in consideration of the payment of benefits under this Code section, such appellate court judge shall resign from office as an appellate court judge on or before the day upon which he or she attains 75 years of age or on the last day of the term in which such appellate court judge is serving when he or she attains age 70, whichever is later. Any notice filed prior to July 1, 1986, by an appellate

court judge in active service on such date which contained an agreement to resign on or before such judge's seventieth birthday shall be void and of no force and effect if such judge files a new notice containing an agreement to resign as provided in this subsection and such notice is filed on or before September 1, 1986.

(d) As a condition of eligibility for benefits under this Code section, there shall have been deducted from the earnable compensation of an appellate court judge and remitted to the board of trustees a contribution equivalent to $7\frac{1}{2}$ percent of such judge's earnable compensation for each pay period or part thereof after the date of such judge's written notice of election of benefits. Election of benefits under this Code section constitutes an authorization and direction by that appellate court judge to the clerical personnel of such judge's court to withhold such judge's contributions and remit them to the board of trustees in the manner provided by the board of trustees, together with a sum of money available to the court from annual or supplemental appropriations in an amount sufficient to carry out this Code section.

(e) Upon compliance with this Code section, an appellate court judge may retire and receive benefits under this Code section.

(f) After ten years of service as an appellate court judge, such judge shall be entitled to receive during life a retirement benefit payable monthly equivalent to 75 percent of the salary of an appellate court judge then serving in the office from which such judge retired.

(g) An appellate court judge who is incapacitated prior to the completion of ten years of service as an appellate court judge shall receive during life for each full year of service one-tenth of the benefit such judge would have received had such judge completed ten years of service as an appellate court judge. For the purposes of this subsection, the term "incapacitated" or "incapacity" means physical or mental disability for further performance of duties and shall not mean the attainment of any certain age.

(h) The surviving spouse of an appellate court judge, provided such surviving spouse is the designated beneficiary, shall be entitled to receive a benefit payable monthly for life equivalent to 50 percent of the benefits to which the spouse would have been entitled based upon his or her years of service as an appellate court judge and without regard to whether such judge had attained age 65. However, if the designated beneficiary, or beneficiaries, is someone other than the surviving spouse of the deceased judge, then such named beneficiary or beneficiaries shall be entitled to receive a benefit payable monthly for life based on an actuarial equivalent, provided the actuarial equivalent shall not be in excess of 50 percent of the amount that would have been payable to the judge. For the purpose of this provision, in the event the beneficiary, or beneficiaries, is not the member's spouse, the actuarial equivalent shall be computed based upon the assumption that the member had a spouse who was the same age as the member.

(i) Survivors benefits shall be available to appellate court judges at prevailing contribution rates and subject to provisions of law and regulations of the board of trustees; provided, however, that no person who becomes or again becomes subject to the provisions of this Code section on or after July 1, 2009, shall be entitled to such survivors benefits.

(j) If any appellate court judge dies without having received benefits under this Code section and is not survived by a designated beneficiary who is eligible to receive the benefits provided by this Code section, such judge's contributions shall be paid to his or her estate without interest. If any appellate court judge and such judge's designated beneficiary or beneficiaries die as the result of a common accident prior to the time at which the payment of benefits to the judge equals the total contributions made by such judge plus interest thereon, the difference shall be paid to the estate of the judge. If after retirement an appellate court judge and such judge's designated beneficiary or beneficiaries die, but not as the result of a common accident, prior to the time at which the total benefits paid to the judge and such judge's beneficiary or beneficiaries equal the total contributions made by such judge plus interest thereon, the difference shall be paid to the estate of the last decedent.

(k) An appellate court judge who has accrued creditable service under this retirement system may convert such service in order to fulfill the conditions of this Code section on the basis of two years of creditable service being equivalent to one year of service credit under this Code section, provided that creditable service based upon the holding of office as an appellate court judge shall be convertible to service credit under this Code section on an equal time basis. Applications for conversion of service credits under this Code section shall be made in writing to the board of trustees.

(l) Any appellate court judge who elects to receive the benefits provided for by this Code section and who fails to resign his office as appellate court judge on or before the day such judge attains age 75 or on the last day of the term in which such appellate court judge is serving when he or she attains age 70, whichever is later, or on or before June 30, 1972, in the event he or she attained age 70 on or prior to June 30, 1972, shall not be entitled to receive any benefits under this Code section and shall forfeit all contributions made under it.

(m) No benefit shall be payable to an appellate court judge under this Code section until such judge reaches 65 years of age, except for incapacity. (Ga. L. 1971, p. 99, § 1; Ga. L. 1981, p. 1235, §§ 1, 2; Ga. L. 1986, p. 1329, § 1; Ga. L. 1992, p. 477, § 1; Ga. L. 2009, p. 398, § 3/SB 177.)

The 2009 amendment, effective July 1, 2009, added the proviso at the end of subsection (i).

JUDICIAL DECISIONS

Failure to resign timely. — Since each of the two appellate court judges had attained the age of 70 in a previous term, and for each, the 75th birthday was a later date than the last day of the term in which each judge attained the age of 70, each judge was required to resign on or before the judge's 75th birthday, if the judge were to avoid the statutory penalties. *Smith v. Miller*, 261 Ga. 560, 407 S.E.2d 727 (1991).

Right to propose constitutional challenge waived. — Appellate court judges' signing of the documents and participation in a plan offering an enhanced benefits package constituted a waiver of their right to propose constitutional challenges. *Smith v. Miller*, 261 Ga. 560, 407 S.E.2d 727 (1991).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

REQUIRED ELECTION
BENEFITS WAIVED
CREDITABLE SERVICE
BENEFITS PAID

Required Election

Judge may elect optional appellate court benefits. — Subsections (b) and (c) of O.C.G.A. § 47-2-244 state clearly that a judge may elect the optional appellate court benefits in lieu of any retirement allowances otherwise available under the Employees' Retirement System and in lieu of the appointment to or the holding of any emeritus office; this election of benefits under the appellate court judges program must be made within 60 days after the judge assumes office. The written election itself must state that the judge has elected to accept the appellate court benefits in lieu of any retirement allowances otherwise available under the Employees' Retirement System and in lieu of the appointment to or holding of any emeritus office. 1981 Op. Att'y Gen. No. 81-22.

Any judge meeting conditions and rendering required service may retire. — Judge on the Georgia Court of Appeals may retire so long as the judge meets the written election and contribution conditions and has rendered ten years of public employment service on the appellate courts; this service is not required to be rendered and paid for in whole as a member of the Employees' Retirement System of Georgia. 1974 Op. Att'y Gen. No. U74-101.

Service which cannot be established under the Employees' Retirement System can-

not be established in the appellate program. 1981 Op. Att'y Gen. No. 81-22.

Written notice to accept tendered within 60 days. — Written notice stating one has elected to accept the benefits of this statute must be tendered by the appellate court judge to the board of trustees within 60 days after the judge qualifies and assumes the duties attendant to the judge's office on either appellate court. 1976 Op. Att'y Gen. No. U76-9 (see O.C.G.A. § 47-2-244).

Appellate court judge may withdraw first written notice electing benefits if consented to by trustees. 1971 Op. Att'y Gen. No. 71-108.

No legal bar to making a second written acceptance at a time after an effective withdrawal of the appellate court judge's first written election of benefits. 1971 Op. Att'y Gen. No. 71-108.

Benefits Waived

Appellate judge electing optional benefits waives other retirement benefits. — Any Judge of the Court of Appeals of Georgia who elects the optional benefits provided by this statute automatically waives in writing any entitlement to other retirement benefits, at the same time divesting oneself of any right to any contributions previously made to the retirement system. 1974 Op. Att'y Gen. No. U74-101 (see O.C.G.A. § 47-2-244).

Benefits Waived (Cont'd)

Electing optional benefits waives entitlement to any emeritus office. — Any appellate court judge electing the benefits provided by this statute does so in lieu of any retirement allowances otherwise available under the retirement system and in lieu of the appointment to or the holding of any emeritus office; the judge waives in writing any entitlement to any emeritus office and elects to retire solely and only under the provisions and benefits of this statute. 1976 Op. Att'y Gen. No. U76-9 (see O.C.G.A. § 47-2-244).

Electing optional benefits waives per diem allowance granted emeritus judges. — An appellate court judge who has formerly served as a judge of the superior court would have to resign as judge of the superior courts emeritus (now senior judge) before taking advantage of this statute and could not receive the per diem allowance granted emeritus judges in the judge's former circuit. 1971 Op. Att'y Gen. No. U71-82 (see O.C.G.A. § 47-2-244).

Waiver of senior judge appointment. — Judge who elects the appellate court judges retirement benefits gives up or waives the judge's right to appointment as a senior judge. 1981 Op. Att'y Gen. No. 81-22.

Contributions made prior to election refunded. — Any contributions of salary made until the time an appellate court judge elected the benefits of this statute should be refunded. 1974 Op. Att'y Gen. No. U74-101 (see O.C.G.A. § 47-2-244).

Creditable Service

Conversion of Employees' Retirement System service into appellate court service. — After purchasing and establishing superior court bench service as Employees' Retirement System service, a judge may convert it to service credit under the appellate judges program pursuant to subsection (k) of O.C.G.A. § 47-2-244, which authorizes an appellate court judge to convert Employees' Retirement System service to appellate court service credit on the basis of two years of creditable service under Employees' Retirement System equaling one year of appellate service credit. For example, 13 1/2 years of Employees' Retirement System service could be converted to 6 3/4 years of appellate

court service credit. 1981 Op. Att'y Gen. No. 81-22.

Election under O.C.G.A. § 47-2-244(k) may be made at any time prior to retirement. 2000 Op. Att'y Gen. No. U2000-8.

Convert service to bring total to ten years. — If a judge does not have ten years of public employment service on the appellate bench so as to entitle the judge to retire under subsection (f) of this statute, the judge may then look to subsection (k) of this statute and convert such service as is necessary to bring the judge's total to ten years. 1974 Op. Att'y Gen. No. U74-101 (see O.C.G.A. § 47-2-244).

Cannot transfer service as superior court judge, solicitor general, or district attorney. — There is no statutory authorization for the transfer of creditable service accrued as a superior court judge, a solicitor general, or a district attorney under the emeritus provisions to the retirement program established by this statute. 1976 Op. Att'y Gen. No. U76-9 (see O.C.G.A. § 47-2-244).

Appellate court judge may defer superior court service. — Appellate court judge may defer the purchase, establishment, and conversion of superior court bench service into the appellate judges program until such time as the judge wishes, but prior to retirement. 1981 Op. Att'y Gen. No. 81-22.

Benefits Paid

Judge, upon incapacity, entitled to proportionate benefits. — An appellate court judge who has served more than nine years, but less than ten years, as an appellate court judge may, upon incapacity, be paid retirement benefits at the rate of nine-tenths of the full benefits which would have been allowed had the judge completed ten years of service. 1974 Op. Att'y Gen. No. U74-100.

Benefits from separate retirement systems. — Person may receive benefits from both the Judicial Retirement System and the appellate judge's option of the Employee's Retirement System, assuming the eligibility requirements of both statutes have been met. 2000 Op. Att'y Gen. No. U2000-8.

When person receives 75 percent of present-day salary. — After ten years of service as an appellate court judge, the judge may retire at any age and yet be entitled at the age of 65 to receive during the rest of the judge's life a retirement benefit of

75 percent of the salary of an appellate court judge then serving in the office from which the judge retired. 1971 Op. Att'y Gen. No. 71-203.

Contributions of judge, ineligible for retirement, refunded. — Should an appellate court judge electing the benefits of this statute leave the appellate bench by way of a reason other than death, and is not eligible for retirement benefits, the judge's accumulated contributions should be refunded to the judge. 1976 Op. Att'y Gen. No. U76-9 (see O.C.G.A. § 47-2-244).

Widow of judge completing required service entitled to benefits. — Widow of a judge who has completed ten years of service, then has stepped down from the bench, and who died prior to attaining age 65, would be entitled to the benefits provided for under this statute. 1971 Op. Att'y Gen. No. 71-203 (see O.C.G.A. § 47-2-244).

Spouse of judge waiving eligibility not entitled to benefits. — When, under subsection (c) of O.C.G.A. § 47-2-244, a judge waives or foregoes eligibility for appointment as senior judge by electing the appellate court judges program, it seems clear that the judge's spouse would have no further right to benefits from the emeritus fund in the event of the death of the judge. 1981 Op. Att'y Gen. No. 81-22.

Benefits increase in event present appellate salary increases. — In the event a salary increase is provided by law for present appellate court judges, the retirement benefits currently being paid to retired appellate court judges and the spouses of deceased appellate court judges entitled to benefits increase on a proportionate basis under the provisions of this statute. 1978 Op. Att'y Gen. No. U78-5 (see O.C.G.A. § 47-2-244).

47-2-245. Creditable service for secretaries of appellate court judges, superior court judges and district attorneys for certain prior services.

(a) Any member who became a member by operation of Code Section 47-2-242 or 47-2-243 shall be eligible to obtain creditable service for all prior service as an officer or employee of a state court judge or a superior court judge while covered by a retirement or pension system operated by a county for county employees if such person has not yet begun receiving a retirement or disability benefit from such retirement or pension system.

(b) To obtain creditable service under this Code section, the member must apply to the board of trustees not later than December 31, 2000, or within six months after becoming a member, whichever date is later, and must provide such evidence of such prior service as the board deems necessary. Upon notification in writing by the board of trustees of this retirement system, the board of trustees or other managing body of the local retirement or pension system shall transfer to this retirement system accumulated employer contributions and accumulated interest thereon which have been credited by the local retirement or pension system to each employee, and thereafter such person shall not be entitled to receive a benefit from such local retirement or pension system.

(c) Upon receipt of the funds provided for in subsection (b) of this Code section, the trustees shall grant to the member such creditable service as such amount will provide without creating any accrued liability, as a result of granting such creditable service, against this retirement system. If the amount of creditable service so obtained is less than the actual number of years of eligible service, the member is authorized, but not required, to

obtain the difference by paying to the board of trustees an amount sufficient to grant such creditable service without creating any accrued liability, as a result of granting such creditable service, against this retirement system. (Code 1981, § 47-2-245, enacted by Ga. L. 1998, p. 1109, § 1; Ga. L. 2000, p. 1271, § 1.)

PART 7

SUPERIOR COURT JUDGES, DISTRICT ATTORNEYS, ASSISTANT DISTRICT ATTORNEYS, EMPLOYEES OF THE PROSECUTING ATTORNEYS' COUNCIL

47-2-260. Continuation of membership, rights, and benefits of judges of superior courts and district attorneys; notice of election to continue membership; contributions.

(a) The provisions of this or any other law to the contrary notwithstanding, on and after April 1, 1969, any person appointed or elected as a judge of the superior court or as a district attorney who at the time of such appointment or election is a member of the Employees' Retirement System of Georgia shall be entitled to elect to continue as a member of the retirement system while holding office as a judge of the superior court or district attorney. All rights, credits, and funds in the retirement system which are possessed by any such member at the time of the member's appointment or election shall be continued in force and the member shall be entitled to all rights and benefits under the retirement system to which the member was entitled at the time of the member's appointment or election and to all rights subsequently acquired.

(b) Within 30 days after appointment or election as a judge of the superior court or as a district attorney, any such person who elects to continue as a member of the retirement system shall notify the director of the Employees' Retirement System of Georgia and The Council of Superior Court Judges of Georgia or the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, of that decision. Upon making such election and giving the required notice, a member who is subject to the provisions of this Code section shall not be required to become a member of or make contributions to the Georgia Judicial Retirement System created by Chapter 23 of this title.

(c) Employee contributions, including contributions for retirement allowances, survivors benefits under Code Section 47-2-128, and social security coverage, of members referred to in this Code section shall be deducted by The Council of Superior Court Judges of Georgia or the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, from the compensation paid by the state to such members and remitted to the retirement system.

(d) The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to pay from the funds appropriated or otherwise made available for the operation of the judicial branch of government of this state the required employer contributions, including contributions for retirement allowances, survivors benefits under Code Section 47-2-128, and social security coverage, and to remit those contributions to the retirement system. (Ga. L. 1969, p. 829, § 1; Ga. L. 1989, p. 347, § 1; Ga. L. 1993, p. 1402, § 11; Ga. L. 1998, p. 513, § 7; Ga. L. 2009, p. 753, § 1/SB 109; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2010, in the middle of the first sentence of subsection (b) and the middle of subsection (c), substituted "Council of Superior Court Judges of Georgia or the Prosecuting Attorneys' Council of the State of Georgia, as appropriate," for "Department of Administrative Services"; and, in subsection (d), substituted "Council of Superior Court Judges of Georgia and the Prosecuting Attorney's Council of the State of Georgia are" for "Department of Administrative Services is" near the beginning.

The 2010 amendment, effective July 1, 2010, substituted "The Council" for "the Council" in subsections (b) and (c).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia

Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

47-2-261. Transfer of credits and funds from the District Attorneys Retirement Fund of Georgia upon employment by an agency subject to the Employees' Retirement System of Georgia.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 29, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1956, p. 54, § 2; Ga. L. 2000, p. 1697, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-262. Membership in retirement system of assistant district attorneys and employees of the Prosecuting Attorneys' Council; notice of election to become a member; contributions.

(a) As used in this Code section, the term:

(1) "Assistant district attorneys" means assistant district attorneys who are compensated from state funds pursuant to Code Section 15-18-14.

(2) "Prosecuting Attorneys' Council of the State of Georgia" means the Prosecuting Attorneys' Council of the State of Georgia created by Article 2 of Chapter 18 of Title 15.

(b) Each assistant district attorney and each employee of the Prosecuting Attorneys' Council of the State of Georgia, hereinafter in this Code section collectively referred to as "employee" or "employees," who becomes an employee on or after July 1, 1979, shall become a member of the Employees' Retirement System of Georgia as a condition of his or her employment, unless he or she is eligible for membership in another publicly supported retirement or pension system or fund which provides retirement benefits based wholly or partially on compensation of such employee paid from state funds. An employee who is eligible for membership in any such other publicly supported retirement or pension system or fund may elect to become a member of the retirement system in lieu of membership in such other publicly supported retirement or pension system or fund by notifying the board of trustees of such election within 90 days after becoming employed with the Prosecuting Attorneys' Council of the State of Georgia. Any such employee who fails to notify the board of trustees within such time shall not at any time thereafter be eligible for membership in the retirement system. The state salary paid to employees who become members of the retirement system shall be the basis for employee and employer contributions for such employees. All employer contributions required by this chapter for such members shall be paid from funds appropriated or otherwise available. The Prosecuting Attorneys' Council of the State of Georgia shall deduct from the state salaries payable to such members the employee contributions required by this chapter. (Ga. L. 1978, p. 2173, § 22; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 92, § 1; Ga. L. 1998, p. 126, § 1; Ga. L. 2004, p. 586, § 1; Ga. L. 2009, p. 753, § 2/SB 109; Ga. L. 2010, p. 1207, § 30/SB 436.)

The 2009 amendment, effective July 1, 2010, in subsection (b), in the fourth sentence, inserted "or her" and inserted "or she", in the eighth sentence, substituted "available" for "made available for the operation of the superior courts" at the end, and, in the last sentence, substituted "Prosecuting Attorneys' Council of the State of

Georgia" for "commissioner of administrative services".

The 2010 amendment, effective July 1, 2010, deleted "employed on June 30, 1979, may elect to become a member of the Employees' Retirement System of Georgia. Any such employee electing to become a member of the retirement system shall so notify

the board of trustees not later than October 1, 1979. Any such employee who failed to notify the board of trustees by that date shall not at any time thereafter be eligible for membership in the retirement system. Any person" following "employees," in the middle of the present first sentence of subsection (b); and deleted former subsection (c), which read: "Any person who was required to become a member of this retirement system by operation of subsection (b) of this Code section but who failed to do so at the time he or she was so required because of an administrative error may receive creditable service for all or a portion of such period of prior service by paying to the board of trustees an amount which would warrant the grant of creditable service without creating any additional actuarial accrued liability as to the retirement system. Such payment may include a transfer of funds from a money purchase pension plan maintained by the employee's employer prior to July 1, 2004, which shall be credited to the

employee's annuity account established by the retirement system. The employee's employer is authorized to supplement such amount."

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-263. Credit for certain past service as an assistant district attorney or employee of the Prosecuting Attorneys' Council; payment of employee contributions; credit for service as full-time law assistant.

(a) As used in this Code section, "past service as an assistant district attorney" shall include service rendered in that position pursuant to an Act authorizing assistant district attorneys in certain judicial circuits, Ga. L. 1970, p. 716, as amended, notwithstanding its subsequent repeal.

(b) Any member who is subject to Code Section 47-2-262 may receive creditable service under this chapter for past service as an assistant district attorney or as an employee of the Prosecuting Attorneys' Council of the State of Georgia upon payment to the board of trustees of the employee contributions which he would have paid had he been a member of the retirement system at the time such past service was rendered. The basis for employee contributions to obtain creditable service under this Code section shall be the state salary paid to the members claiming such past service at the time the service was rendered.

(c) Any member who is subject to Code Section 47-2-262 may receive up to four years of creditable service under this chapter for past service as a full-time law assistant for a judicial circuit employed pursuant to the provisions of Code Section 15-6-28 upon payment to the board of trustees of such amount as determined by the actuary as necessary to grant such benefit without creating any accrued actuarial liability as to this retirement

system. The basis for employee contributions to obtain creditable service under this Code section shall be the state salary paid to the member claiming such past service at the time the service was rendered. Such payment must be made not later than July 1, 2003, or within six months of first or again becoming a member, whichever is later. (Ga. L. 1978, p. 2173, § 23; Ga. L. 1998, p. 126, § 1; Ga. L. 2002, p. 1483, § 1.)

47-2-264. Membership in retirement system of secretaries employed by judges of superior courts and district attorneys; creditable service; contributions.

(a) Each secretary employed by a judge of the superior court or a district attorney under Code Section 15-6-25 or 15-18-17 shall be a member of the Employees' Retirement System of Georgia with a commencement date of July 1, 1975. Any such secretary who is already a member of the retirement system by virtue of service with another employer shall be entitled to credit for all service rendered while an employee under the retirement system. All contributions required under this chapter made on behalf of such judicial secretaries shall be paid from funds appropriated or otherwise available for the operation of the superior courts, and all contributions required under this chapter made on behalf of such secretaries of district attorneys shall be paid from funds appropriated or otherwise available. All such payments shall be in addition to the regular compensation provided by law for such secretaries.

(b) Any member who is a secretary of a judge of the superior court or a district attorney and who was employed as such a secretary prior to July 1, 1993, may receive creditable service under this chapter for such employment prior to July 1, 1993, as provided in this subsection. In order to obtain creditable service under this subsection, the member shall (1) provide to the board of trustees acceptable evidence of the period prior to July 1, 1993, during which the member was employed as a secretary of a judge of the superior court or a district attorney but was not a member of this retirement system or any other retirement system and of the compensation received by the member for such employment; and (2) pay to the board of trustees the employee contributions which would have been required if such person had been a member of the retirement system during such period of employment, together with interest at the rate of 6 percent per annum from the date such employee contributions would have been due. The basis for computing such employee contributions shall be the compensation actually received and established to the board as provided in this subsection. No creditable service shall be allowed under this subsection for any period of employment for which creditable service is allowed under any other provision of this chapter or for which creditable service is received under any provision of any other retirement or pension system of this state or of any political subdivision of this state.

(c) Any member who became a member by operation of this Code section shall be eligible to obtain creditable service for all prior service as a secretary of a state court judge while covered by a retirement or pension system operated by a county for county employees if such person has not yet begun receiving a retirement or disability benefit from such retirement or pension system. To obtain such creditable service, the member must apply to the board of trustees not later than December 31, 1998, or within six months after becoming a member, whichever date is later, and must provide such evidence of such prior service as the board deems necessary. Upon notification in writing by the board of trustees of this retirement system, the board of trustees or other managing body of the local retirement or pension system shall transfer to this retirement system accumulated employee contributions and accumulated interest which have been credited by the local retirement or pension system to each employee and have not been withdrawn, and thereafter such person shall not be entitled to receive a benefit from such local retirement or pension system. The employee shall pay to the board of trustees of this retirement system any employee contributions which have been paid to the local retirement or pension system by or on behalf of each employee and have been withdrawn from the local retirement or pension system, plus interest thereon at the rate of 5 percent per annum. Upon receipt of the funds so transferred, the board of trustees shall grant to the member such creditable service as such amount will provide without creating any accrued liability, as a result of granting such creditable service, against this retirement system. If the amount of creditable service so obtained is less than the actual number of years of eligible service, the member is authorized, but not required, to obtain the difference by paying to the board of trustees an amount sufficient to grant such creditable service without creating any accrued liability, as a result of granting such creditable service, against this retirement system.

(d) Any member of this retirement system subject to the provisions of this Code section may obtain creditable service for prior service as a secretary to a state court judge while a participating member of a county retirement system by so notifying the board of trustees of this retirement system and the board of trustees of the county retirement system. Upon receiving such notice, the board of trustees of the county retirement system shall transfer to the board of trustees of this retirement system all employer and employee contributions made by or on behalf of the member, together with regular interest thereon. Upon receipt of such funds, the member shall be credited with such years of service, not to exceed the years of actual service as secretary for a state court judge, as such amount will warrant without creating any unfunded actuarial accrued liability. (Ga. L. 1975, p. 1506, § 5; Ga. L. 1986, p. 1250, § 1; Ga. L. 1994, p. 708, § 1; Ga. L. 1998, p. 1109, § 2; Ga. L. 2000, p. 1271, § 2; Ga. L. 2009, p. 753, § 3/SB 109.)

The 2009 amendment, effective July 1, 2010, in subsection (a), in the third sentence, inserted “made on behalf of such judicial secretaries” in the middle and in-

serted “contributions required under this chapter made on behalf of such secretaries of district attorneys shall be paid from funds appropriated or otherwise available.” at the end, and, at the beginning of the last sentence, added “All”.

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Section’s intent to provide adequate secretarial assistance. — Intent of the General Assembly in providing for the employment and compensation of secretaries for superior court judges and district attorneys and providing that certain of these secretaries must become members of the retirement system was to provide superior court judges and district attorneys with adequate secretarial assistance, so that their official duties could be accomplished efficiently without undue clerical problems; it is reasonable that the General Assembly did not intend for this to penalize certain secretaries by forcing their removal from county retirement programs. 1975 Op. Att’y Gen. No. 75-70.

47-2-264.1. Membership in retirement system of employees paid by the office of the district attorney; contributions; creditable service.

(a) As used in this Code section, the term:

(1) “Circuit paid district attorney employee” means any full-time assistant district attorney, secretary, investigator, clerical assistant, para-professional, or victim or witness assistance personnel employed by a district attorney of a multicounty judicial circuit from funds paid for the operation of such office by the counties of such judicial circuit and who is not eligible for membership in a county retirement system.

(2) “State paid district attorney employee” means any full-time assistant district attorney, secretary, or investigator employed by a district attorney who is a member of this retirement system pursuant to the provisions of Code Section 47-2-262, 47-2-264, or 47-2-265.

(b) Upon the enactment of a rule or regulation of each of the counties composing a judicial circuit so authorizing, a circuit paid district attorney employee may, at his or her option, elect to become a member of this retirement system. Once such a rule or resolution is adopted by each county in the judicial circuit, no revocation shall be effective until the rule or resolution is revoked in each such county, and any revocation of the privilege imparted thereby shall not apply to any employee employed prior to the effective date of such revocation. Any such employee shall exercise his or her option to become a member of this retirement system by so notifying the board of trustees not later than 60 days after becoming eligible, and, once made, such election shall be irrevocable. The employing district attorney’s office shall deduct from each such member’s compensation the member’s contribution, and the employing district attorney’s office shall pay the employer’s contribution from funds paid to such office by the counties composing the judicial circuit.

(c) Any person electing to become a member of this retirement system pursuant to the provisions of subsection (b) of this Code section shall be

subject to the provisions of Code Section 47-2-334; provided, however, that any member who, without a break in service, accepts employment as a circuit paid district attorney employee shall continue in the same membership status possessed by the member immediately prior to accepting such employment without any interruption in membership and without the loss of any creditable service.

(d) Any member who becomes a member of this retirement system pursuant to the provisions of subsection (b) of this Code section shall be entitled to receive up to five years of creditable service for prior service as a circuit paid district attorney employee during which the member was not a member of any other public retirement system as provided in this subsection. In order to receive such creditable service, the member shall provide the board of trustees with proof satisfactory to the board of the period of employment as a circuit paid district attorney employee and the compensation received during that time and shall pay to the board of trustees the employer and employee contributions which would have been paid by or on behalf of such member if he or she had been a member, together with regular interest thereon. The employing district attorney's office is authorized to supplement such payments from such funds as are available to it from the counties composing the judicial circuit. The member shall receive such creditable service as may be granted without creating any accrued unfunded liability of this retirement system.

(e) Any state paid district attorney employee who is a member of this retirement system on July 1, 1998, shall be entitled to receive up to five years of creditable service for prior service as a circuit paid district attorney employee during which the member was not a member of any other public retirement system as provided in this subsection. In order to receive such creditable service, the member shall provide the board of trustees with proof satisfactory to the board of the period of employment as a circuit paid district attorney employee and the compensation received during that time and shall pay to the board of trustees the employer and employee contributions which would have been paid by or on behalf of such member if he or she had been a member, together with regular interest thereon. The employing district attorney's office is authorized to supplement such payments from such funds as are available to it from the counties composing the judicial circuit. The member shall receive such creditable service as may be granted without creating any accrued unfunded liability of this retirement system. (Code 1981, § 47-2-264.1, enacted by Ga. L. 1998, p. 162, § 1; Ga. L. 1999, p. 20, § 1.)

47-2-265. Membership in retirement system of district attorney investigators.

(a) As used in this Code section, the term "district attorney investigator" means a district attorney investigator who is compensated from state funds pursuant to Code Section 15-18-14.1.

(b) Effective on July 1, 1988, or on first becoming a district attorney investigator at any time after that date, each district attorney investigator shall become a member of the Employees' Retirement System of Georgia as a condition of employment, unless such investigator was, immediately prior to appointment as a district attorney investigator, a member of another publicly supported retirement or pension system or fund which provides retirement benefits based wholly or partially on compensation paid from state funds. A district attorney investigator who was employed as an investigator in a district attorney's office prior to appointment as a district attorney investigator and who was a member of any such other publicly supported retirement or pension system or fund immediately prior to such appointment may elect to become a member of the Employees' Retirement System of Georgia in lieu of membership in such other publicly supported retirement or pension system or fund by notifying the board of trustees of such election within 90 days after becoming employed pursuant to Code Section 15-18-14.1. Any such district attorney investigator who fails to notify the board of trustees within such time shall not at any time thereafter become eligible for membership in the Employees' Retirement System of Georgia during such service as a district attorney investigator.

(c) Any person who becomes a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334, except that any member of the retirement system who, without any break in service, is appointed as a district attorney investigator shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service.

(d) The state salaries paid to district attorney investigators who become members of the retirement system pursuant to this Code section shall be the basis for employee and employer contributions to the retirement system for such members. All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter for such members shall be paid from funds appropriated or otherwise available. The Prosecuting Attorneys' Council of the State of Georgia shall deduct from the state salaries payable to such members the additional employee contributions required by this chapter.

(e) Any member who became a member by operation of this Code section shall be eligible to obtain creditable service for all prior service as such district attorney investigator prior to becoming a member of this retirement system. To obtain such creditable service, the member must apply to the board of trustees not later than December 31, 2000, or within six months after becoming a member, whichever date is later, and must provide such evidence of such prior service as the board deems necessary. The employee shall pay to the board of trustees of this retirement system any employee and employer contributions which would have been paid to

this retirement system had such employee been a member of this retirement system at the time such service was rendered plus interest thereon at the rate of 5 percent per annum. (Code 1981, § 47-2-265, enacted by Ga. L. 1988, p. 1338, § 1; Ga. L. 2000, p. 1217, § 1; Ga. L. 2009, p. 753, § 4/SB 109.)

The 2009 amendment, effective July 1, 2010, in subsection (d), substituted “available” for “made available for the operation of the superior courts” at the end of the second sentence and substituted “Prosecuting Attorneys’ Council of the State of Georgia” for “Department of Administrative Services” at the beginning of the last sentence.

47-2-266. Membership of judicial employees; contributions.

(a) As used in this Code section, the term:

(1) “Judicial employee” means:

(A) A full-time assistant to a district administrative judge and any full-time secretarial or clerical judicial administrative district employee employed pursuant to the provisions of Code Section 15-5-6;

(B) A full-time employee of The Council of Superior Court Judges of Georgia provided for in Code Section 15-6-34; and

(C) A full-time court administrator for a judicial circuit employed pursuant to the provisions of Code Section 15-6-28.

(2) “Prior service as a judicial employee” means service as a judicial employee rendered prior to July 1, 1990, or prior to July 1, 1992, as applied to a judicial employee specified in subparagraph (C) of paragraph (1) of this subsection.

(b) Effective on July 1, 1990, or on July 1, 1992, as applied to a judicial employee specified in subparagraph (a)(1)(C) of this Code section, or on first becoming a judicial employee at any time after either such date, as applicable, each judicial employee shall become a member of the Employees’ Retirement System of Georgia as a condition of employment.

(c) The salary paid from state funds to each judicial employee shall be the basis for employee and employer contributions to the retirement system for the purposes of this Code section. All employer contributions, including employee contributions made by the employer on behalf of members, shall be paid from funds appropriated or otherwise made available for the operation of the judicial branch of the state government. Employee contributions of members under this Code section shall be deducted and remitted to the board of trustees by the appropriate employing authority.

(d) Any person who was a member of the retirement system immediately prior to becoming a judicial employee and who has not withdrawn employee contributions from the retirement system shall receive full creditable service for membership service in the retirement system which

was completed prior to becoming a judicial employee and shall have the same membership status in the retirement system which the person possessed immediately prior to becoming a judicial employee.

(e)(1) A person becoming a member of the retirement system pursuant to the provisions of this Code section may obtain creditable service for prior service as a judicial employee if the following payments are made to the board of trustees:

(A) The person claiming the creditable service shall pay the employee contributions that would have been paid to the retirement system if the person had been a member during the period for which creditable service is claimed plus regular interest on such employee contributions compounded annually from the time the prior service was rendered to the date of payment; and

(B) The Council of Superior Court Judges of Georgia, the president of The Council of Superior Court Judges of Georgia, or the district administrative judge employing the person claiming the creditable service shall pay the employer contributions that would have been paid to the retirement system if the person claiming the creditable service had been a member during the period of time for which creditable service is claimed plus regular interest on such employer contributions compounded annually from the time the prior service was rendered to the date of payment. For prior service as a judicial employee specified in subparagraph (a)(1)(C) of this Code section, the employer contributions plus interest required by this subparagraph shall be paid by The Council of Superior Court Judges of Georgia from funds appropriated or available for the operation of the superior courts.

(2) The employee and employer contributions provided for in paragraph (1) of this subsection shall be determined on the basis of compensation actually received as a judicial employee during the period of prior service for which creditable service is claimed. The employer contributions plus interest thereon provided for in subparagraph (B) of paragraph (1) of this subsection may be paid from any funds of the judicial branch of the state government appropriated or otherwise available to The Council of Superior Court Judges of Georgia or district administrative judges or appropriated or available for the operation of the superior courts. (Code 1981, § 47-2-266, enacted by Ga. L. 1990, p. 356, § 1; Ga. L. 1992, p. 477, § 1; Ga. L. 1992, p. 2995, § 1; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 92, § 1; Ga. L. 2009, p. 753, § 5/SB 109; Ga. L. 2010, p. 1207, § 31/SB 436.)

The 2009 amendment, effective July 1, 2010, substituted “Council of Superior Court Judges of Georgia” for “commissioner of administrative services” near the

end of the last sentence of subparagraph (f)(1)(B).

The 2010 amendment, effective July 1, 2010, in subsection (a), added “and” at the

end of subparagraph (a)(1)(B), deleted former subparagraph (a)(1)(C), which read: "A full-time employee employed for the purpose of assisting sentence review panels provided for in Code Section 17-10-6; and", redesignated former subparagraph (a)(1)(D) as present subparagraph (a)(1)(C), and substituted "(C)" for "(D)" in paragraph (a)(2); substituted "subparagraph (a)(1)(C)" for "subparagraph (a)(1)(D)" near the middle of subsection (b); deleted former subsection (c), which read: "Any person becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334, except that any member of the retirement system who, without any break in service, accepts employment as a judicial employee shall continue in the same membership status possessed by the member immediately prior to accepting such employment without any interruption in membership service and without the loss of any creditable service."; redesignated former subsections (d) through (f) as present subsections (c) through (e), respectively; in present subsection (e), in the second sentence of subparagraph (e)(1)(B), substituted "subparagraph

(a)(1)(C)" for "subparagraph (a)(1)(D)" and substituted "The" for "the", and deleted former paragraph (e)(3), which read: "Any member qualified to obtain creditable service pursuant to the authority of subparagraph (a)(1)(D) of this Code section shall apply to the board of trustees for such creditable service by not later than July 1, 1993."

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-267. Membership of employees of district attorneys; contributions.

Except as provided in Code Section 47-2-265, each full-time employee of a district attorney, which employee is compensated through funds appropriated by the General Assembly, shall be a member of this retirement system as a condition of employment. Any such employee who is already a member of this retirement system by virtue of service with another employer shall be entitled to credit for all service rendered while an employee under the retirement system. All contributions required under this chapter shall be paid from funds appropriated or otherwise available. The Prosecuting Attorneys' Council of the State of Georgia shall deduct from the state salaries paid to such members the employee contributions required by this chapter. (Code 1981, § 47-2-267, enacted by Ga. L. 1998, p. 172, § 1; Ga. L. 2009, p. 753, § 6/SB 109.)

The 2009 amendment, effective July 1, 2010, deleted "for the operation of the superior courts" following "available" at the end of the third sentence and substituted

"Prosecuting Attorneys' Council of the State of Georgia" for "Department of Administrative Services" at the beginning of the last sentence.

PART 8

EMPLOYEES OF THE PEACE OFFICERS' ANNUITY AND BENEFIT FUND

47-2-280. Credit for previous service as an employee of the Peace Officers' Annuity and Benefit Fund; contributions.

Anything in this chapter to the contrary notwithstanding, any member with prior service credits who previously was employed by the Peace Officers' Annuity and Benefit Fund shall be eligible to receive credit for such service with the Peace Officers' Annuity and Benefit Fund by paying the regular employer and employee's contribution, including regular interest that would have accumulated on those contributions during such period of employment. In the computation of such contributions and interest, the compensation of such member shall be deemed to have been the same as the compensation such member received on the date of first becoming a member. (Ga. L. 1962, p. 701, § 1.)

PART 9

JUDGES AND OTHER COURT EMPLOYEES; CERTAIN COUNTY EMPLOYEES

47-2-290. Judges, solicitors, and other employees of state courts subject to merit system; membership in retirement system; contributions; exemptions.

(a) The state courts of this state are declared to be adjuncts of the superior courts, the state courts having concurrent jurisdiction in all civil and criminal matters except those exclusively vested in the superior courts. All judges, solicitors, and other employees of any state court in this state shall be subject to a merit system of personnel administration as promulgated by each state court under which all such officers and employees shall perform services on the basis of merit, fitness, and efficiency. All such officers and employees are authorized to become members of the Employees' Retirement System of Georgia in accordance with this chapter. The governing authority of each county of this state shall deduct or collect from each member the employee contributions required by this chapter and shall remit those contributions to the retirement system on a monthly basis. The Council of State Court Judges of Georgia is authorized and directed to pay from the funds appropriated or otherwise available the employer contribution required by this chapter for judges and employees of the state courts, which contribution shall be paid by The Council of State Court Judges of Georgia, upon receipt of an invoice from the retirement system. The Prosecuting Attorneys' Council of the State of Georgia is authorized and directed to pay from the funds appropriated or otherwise available the employer contribution required by this chapter for solicitors-general of the state courts, which contribution shall be paid by the Prosecuting Attorneys'

Council of the State of Georgia, upon receipt of an invoice from the retirement system.

(b) All judges, solicitors, and other employees of any state court who were in service on December 1, 1952, shall be entitled to all benefits authorized under this chapter in the same manner as if they had been members of the retirement system on that date.

(c) Subsection (b) of Code Section 47-2-110 shall not apply to the judges and solicitors of any state court, who may retire at their discretion at any time after becoming eligible to retire.

(d) Code Section 47-2-291 shall not apply to judges and solicitors of the state courts who participate in the retirement system in their capacity as judges and solicitors; but all judges and solicitors so participating shall be entitled to credit for all their prior years of service rendered as judge or solicitor, or both. (Ga. L. 1953, Nov.-Dec. Sess., p. 305, §§ 1-5; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 92, § 1; Ga. L. 2009, p. 753, § 7/SB 109; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2010, in subsection (a), in the fifth sentence, substituted "Council of State Court Judges of Georgia" for "commissioner of administrative services" twice, substituted "or otherwise available" for "for the operation of the superior courts of this state" in the middle, and inserted "for judges and employees of the state courts" near the end, and added the last sentence.

The 2010 amendment, effective July 1, 2010, substituted "The Council" for "the Council" in the fifth sentence of subsection (a).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any

way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

OPINIONS OF THE ATTORNEY GENERAL

Section permissive, not mandatory. — It is clear that, under the language of this statute, the General Assembly used permissive words and not mandatory provisions. A close analysis of the provisions reveals that the governing authority of the county in which the court is located can deduct or collect em-

ployee contributions only from members, and there is no authorization contained therein that contributions shall apply in a mandatory manner to all officers and employees of the courts. This restrictive language, considered with the permissive words "authorized to become members," clearly

shows this statute to be permissive and not mandatory. 1957 Op. Att'y Gen. p. 225 (see O.C.G.A. § 47-2-290).

Person who is both state court judge and juvenile court judge may simultaneously belong to the Employees' Retirement System, if otherwise eligible, and the Trial Judges and Solicitors Retirement Fund. 1981 Op. Att'y Gen. No. 81-6.

Ga. L. 1953, Jan.-Feb. Sess., p. 349, § 2

(see O.C.G.A. § 47-2-70) **does not apply to Ga. L. 1953, Nov.-Dec. Sess., p. 305, §§ 1-5 (see O.C.G.A. § 47-2-290).** 1957 Op. Att'y Gen. p. 225.

Merit system must be established for employees on a court to come under the retirement system. 1957 Op. Att'y Gen. p. 226.

Statute has no effect upon jurisdiction of state courts. 1970 Op. Att'y Gen. No. U70-93 (see O.C.G.A. § 47-2-290).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182, 1197 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 161, 316 et seq.

47-2-291. Prior service as a judge or solicitor of a court of record.

Prior service performed by a member as a judge or solicitor of a court of record shall be creditable year for year, not to exceed five years for each type of service, notwithstanding that such service may have been for longer periods. (Ga. L. 1952, p. 175, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Prior service creditable under general retirement system. — If a superior court judge becoming an appellate court judge elects coverage under the general retirement system program, rather than Ga. L. 1971, p. 99, § 1 (see O.C.G.A. § 47-2-244), Ga. L. 1952,

p. 175, § 3 (see O.C.G.A. § 47-2-291) would allow service performed as a judge or solicitor of a court of record to be creditable as prior service year for year, not to exceed five years for each type of service. 1976 Op. Att'y Gen. No. U76-9.

47-2-292. Merit system of personnel administration for county revenue employees; membership in retirement system; contributions; credit for prior service.

(a) The offices of the tax commissioners, tax collectors, and tax receivers of the counties of this state are declared to be adjuncts of the Department of Revenue, such offices assisting in the returning and collecting of state taxes. All tax commissioners, tax collectors, and tax receivers and employees in their offices shall be subject to a merit system of personnel administration, as promulgated by each such office, under which all such officials and employees shall perform services on the basis of merit, fitness, and efficiency.

(b) The official in charge of such office, if he or she is responsible for the payment of the employees in that office, or the governing authority of the county, if the official and the employees are paid by it, shall deduct or collect from each member the employee contributions required by this chapter and shall remit the same to the retirement system as required by

regulations. The state revenue commissioner is authorized and directed to pay from the funds appropriated for the operation of the Department of Revenue, the employer contributions required by this chapter, upon receipt of an invoice from the retirement system.

(c) In addition to the regular employer contributions required by this chapter, the state revenue commissioner is authorized and directed to pay from the funds appropriated for the operation of the Department of Revenue an additional contribution, as determined by the board of trustees, in a regular monthly amount sufficient to amortize, within a period of not more than 20 years, the prior service values of such members.

(d) Except for those persons holding office on June 30, 1983, and except as otherwise provided by subsection (f) of this Code section, any person who becomes a tax commissioner, tax collector, or tax receiver at any time after June 30, 1983, shall be a member of the retirement system under the provisions of Code Section 47-2-334 as a condition of holding office. Any person holding office as a tax commissioner, tax collector, or tax receiver on June 30, 1983, except such officials who are then members of the retirement system and except as otherwise provided by subsection (f) of this Code section, shall have the option of becoming a member of the retirement system, and such option must be exercised by not later than June 30, 1984. Such officials electing membership in the retirement system may obtain creditable service under the retirement system for actual previous service as tax commissioner, tax collector, or tax receiver or as an employee of any such official by paying to the board of trustees the regular employer and employee contributions for each year or portion thereof claimed as previous service, with the computation of such contributions being based on the compensation of the official at the time of becoming a member of the retirement system. In addition to such employer and employee contributions, the official claiming such previous service shall pay interest at the rate of 6 percent per annum on the amount of such contributions compounded annually from the time the previous service was rendered until payment is made to the board of trustees. The payment required for such previous service shall be made to the board of trustees at the time application is made for membership in the retirement system. Except for the right to obtain creditable service for previous service as provided in this subsection, any official holding office on June 30, 1983, who elects membership in the retirement system shall be under the provisions of Code Section 47-2-334.

(e) Except for those persons in employment on June 30, 1983, and except as otherwise provided by subsection (f) of this Code section, any person who becomes an employee of a tax commissioner, tax collector, or tax receiver at any time after June 30, 1983, shall have the option, which must be exercised within 180 days after the date of employment, of becoming a member of the retirement system under the provisions of Code

Section 47-2-334. Any person employed by a tax commissioner, tax collector, or tax receiver on June 30, 1983, except such employees who are then members of the retirement system and except as otherwise provided by subsection (f) of this Code section, shall have the option of becoming a member of the retirement system, and such option must be exercised by not later than June 30, 1984. Such employees electing membership in the retirement system may obtain creditable service under the retirement system for actual previous service as an employee of a tax commissioner, tax collector, or tax receiver by paying to the board of trustees the regular employer and employee contributions for each year or portion thereof claimed as previous service, with the computation of such contributions being based on the compensation of the employee at the time of becoming a member of the retirement system. In addition to such employer and employee contributions, the employee claiming such previous service shall pay interest at the rate of 6 percent per annum on the amount of such contributions compounded annually from the time the previous service was rendered until payment is made to the board of trustees. The payment required for such previous service shall be made to the board of trustees at the time application is made for membership in the retirement system. Except for the right to obtain creditable service for previous service as provided in this subsection, any person employed on June 30, 1983, who elects membership in the retirement system shall be under the provisions of Code Section 47-2-334.

(f) Notwithstanding any other provisions of this Code section, no tax commissioner, tax collector, tax receiver, or any employee of any such official shall be eligible for membership in the retirement system if such official or employee is covered or becomes covered by any other public retirement or pension system, excluding social security coverage and coverage under any county or other local retirement or pension system. The provisions of subsections (a), (b), and (c) of this Code section shall apply to any tax officials or their employees who become members of the retirement system pursuant to subsections (d) and (e) of this Code section. (Ga. L. 1958, p. 637, § 1; Ga. L. 1963, p. 41, § 1; Ga. L. 1969, p. 1013, § 1; Ga. L. 1973, p. 880, § 1; Ga. L. 1983, p. 655, § 1; Ga. L. 1990, p. 527, § 1; Ga. L. 2010, p. 1207, § 32/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted former subsection (b), which read: "All individuals who served as such officials and employees on or after December 1, 1956, are eligible to become members of Division A of the retirement system. Any individual who becomes such an official or employee after August 1, 1958, shall become a member of Division A of the retirement system as a condition of his employment."; redesignated former subsections (c) and (d) as present subsections (b) and (c), respec-

tively; inserted "or she" in the first sentence of present subsection (b); deleted former subsection (e), which read: "All tax commissioners, tax collectors, tax receivers, and the employees in their offices who were in service on or after December 1, 1956, shall be entitled to all prior service credits authorized under this chapter in the same manner as if they had been members of the retirement system on such date, provided that prior service credits shall be available only to persons who become members at the time

coverage was originally extended to them. No prior service credit shall be available to a person who became such an official or employee after August 1, 1958. The value of the prior service credits under this Code section shall not be in excess of the value of 25 years of prior service.”; redesignated former subsections (f) through (h) as present subsections (d) through (f), respectively; substituted “subsection (f)” for “subsection (h)” twice in present subsections (d) and (e); and, in the last sentence of present subsection (f), substituted “subsections (a), (b), and (c)” for “subsections (a), (c), and (d)” and substituted “subsections (d) and (e)” for “subsections (f) and (g)” near the end.

Cross references. — Creditable service not allowed for military service from which discharge was other than honorable, § 47-1-11.

Editor's notes. — Ga. L. 1990, p. 527, § 3, not codified by the General Assembly, provides: “Any creditable service obtained prior to the effective date of this Act under the Employees' Retirement System of Georgia and under a local retirement or pension system by any person who is subject to the

provisions of Code Section 47-2-292 of the Official Code of Georgia Annotated shall not be rescinded or forfeited as a result of the provisions of said Code Section 47-2-292 as it existed prior to the effective date of this Act [July 1, 1990], and such creditable service is ratified and confirmed.”

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

JUDICIAL DECISIONS

Plaintiff lacked property interest in continued employment. — Plaintiff contended that O.C.G.A. § 47-2-292 mandated that employees of the Madison County Tax Commissioner's Office (TCO) be subject to a merit system under which the employees were entitled to a hearing prior to termination. However, the statute contained no such requirement, and plaintiff did not point to any

evidence that the TCO of Madison County promulgated a merit system that required a hearing prior to termination for cause; accordingly, plaintiff was not entitled to a hearing prior to termination and did not have a protected property interest in continued employment with the TCO. *Epps v. Watson*, No. 3:05-CV-68 (CDL), 2008 U.S. Dist. LEXIS 87814 (M.D. Ga. Oct. 30, 2008).

OPINIONS OF THE ATTORNEY GENERAL

Court clerks and employees not entitled to membership. — Since there is no statutory authority for such membership, neither superior court clerks nor their employees are entitled to membership in the Employees' Retirement System of Georgia. 1976 Op. Att'y Gen. No. U76-8.

County tax officials and their employees are eligible for participation in the retirement system, provided the county tax office took timely and proper action to qualify as an adjunct of the State Revenue Department. 1962 Op. Att'y Gen. p. 367.

County tax officials must purchase prior creditable service. — County tax commissioners, collectors, receivers, and employees of those officers, who avail themselves of the provisions of Ga. L. 1971, p. 93, § 1 and Ga. L. 1971, p. 96, § 2 (see O.C.G.A. § 47-2-93) must purchase all of the creditable service to which they are entitled. 1976 Op. Att'y Gen. No. 76-129.

State Revenue Department makes employer contributions. — State Revenue Department is authorized and directed to make employer contributions in behalf of officials

and employees of county tax offices which comply with all the conditions precedent set forth in this statute within the applicable time limitations expressly provided for therein. 1969 Op. Att’y Gen. No. 69-349 (see O.C.G.A. § 47-2-292).

Restriction of department’s power to limit use of leave time. — Department of Revenue does not have the authority to promulgate rules and regulations limiting the accumulation and use of sick, annual, and compensatory leave for county tax officials and employees. 1982 Op. Att’y Gen. No. 82-98.

Revenue Department required to pay employer contributions on forfeited leave used as creditable service for retirement benefits on behalf of eligible retiring county tax officials and employees. 1979 Op. Att’y Gen. No. 79-69.

Certification and documentation of forfeited leave. — As the employer for the purposes of retirement system membership, the Department of Revenue may specify the manner in which the certification and documentation for forfeited leave of county tax officials and employees is made. 1982 Op. Att’y Gen. No. 82-98.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1167 et seq.

C.J.S. — 67 C.J.S., Officers and Public

Employees, §§ 161, 313 et seq. 81A C.J.S., States, § 216.

47-2-293. Effect of failure of state court to provide means by which its officials or employees can become members of the retirement system.

Notwithstanding any other provisions of this chapter, any state court which has not provided means by which its employees can become members of the retirement system shall, on and after February 13, 1962, no longer be deemed to be adjuncts of the superior courts. No employee of such state court shall be deemed to be a state employee or otherwise eligible for membership in the retirement system. (Ga. L. 1962, p. 54, § 7.)

OPINIONS OF THE ATTORNEY GENERAL

Tax officials eligible for participation, provided qualified. — County tax officials and their employees are eligible for participation in the retirement system, provided the county tax office took timely and proper action to qualify as an adjunct of the State

Revenue Department. 1962 Op. Att’y Gen. p. 367.

Statute has no effect upon jurisdiction of state courts. 1970 Op. Att’y Gen. No. U70-93 (see O.C.G.A. § 47-2-293).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 81A C.J.S., States, § 216.

47-2-294. Limitation on benefits available to persons who transferred to this retirement system or who became members under Code Section 47-2-290 or 47-2-292.

Any other provisions of law to the contrary notwithstanding, only voluntary service retirement, death, and disability allowances shall apply to individuals who transferred to this retirement system from another such system or who became members under Code Section 47-2-290 or 47-2-292. (Ga. L. 1961, p. 143, § 5.)

JUDICIAL DECISIONS

Cited in Board of Trustees of Employees' Retirement Sys. v. Kenworthy, 253 Ga. 554, 322 S.E.2d 720 (1984).

47-2-295. Transfer from county retirement system of contributions made as juvenile detention facility employee; credit for past service; payment of contributions; eligibility.

(a) Any person who becomes a member after January 1, 1980, but before July 1, 1981, as a result of employment with a juvenile detention facility which has been acquired from a county by a state department and who was an employee of such county immediately prior to becoming a member of this retirement system in a position covered under its retirement or pension system shall have the option of transferring to the retirement system the employer and employee contributions credited to him for service as an employee of the juvenile detention facility. This option must be exercised within six months after becoming a member of the retirement system. It shall be exercised by notifying, in writing, the governing body of the county retirement or pension system and the board of trustees of the member's desire that such contributions be transferred.

(b) Within 30 days after receiving such notification, the governing body of the county retirement or pension system shall pay to the board of trustees of this retirement system an amount equal to such employer and employee contributions. Upon the receipt of such payment, the board of trustees shall deposit that portion representing employee contributions into the annuity savings fund as a credit to the member; and it shall deposit that portion representing employer contributions into the pension accumulation fund. Upon deposit of such contributions, the member shall receive credit for past service rendered as an employee of the county juvenile detention facility; but the amount of past service credited to such member shall be adjusted as necessary so that the accrued liability to this retirement system created by such past service shall be fully funded by the amount of the payment received by the board of trustees from the county retirement or pension system.

(c) If the payment received by the board of trustees is insufficient to cover all past service rendered as an employee of the county juvenile detention facility on a year-for-year basis, the governing authority of the county which formerly employed such member shall be authorized, but not required, to pay to the board of trustees an amount which, when combined with the payment of employer and employee contributions, shall be sufficient to fund all service rendered as an employee of the juvenile detention facility. In the event a county governing authority elects to pay such additional amount, it shall request, in writing, a certification from the board of trustees of such amount; and, upon such payment, the member shall be given credit for all service rendered as an employee of the county juvenile detention facility. The amount, if any, paid by a county governing authority shall be deposited by the board of trustees into the pension accumulation fund.

(d) In addition to persons who become members of this retirement system pursuant to subsection (a) of this Code section, the provisions of this Code section shall also apply to any persons who become members after July 1, 1986, but before December 31, 1987, as a result of employment with a county juvenile detention facility, the employees of which facility have been acquired from a county by a state department and who were employees of such county immediately prior to becoming members of this retirement system in positions covered under such county's retirement or pension system. (Ga. L. 1980, p. 1544, § 2; Ga. L. 1986, p. 1550, § 1; Ga. L. 2000, p. 131, § 1.)

47-2-295.1. Employees of Department of Juvenile Justice.

(a) As used in this Code section, the term:

(1) "Department" means the Department of Juvenile Justice.

(2) "Local retirement system" means a retirement or pension system maintained by a county which includes as members thereof county probation and intake employees who become employees of the department as a result of the county probation and intake services' being transferred to the department pursuant to the provisions of Code Section 15-11-24.3, and the term includes any such retirement or pension system created by law or created by ordinance or resolution of the county under the home rule provisions of the Constitution of Georgia.

(3) "Probation and intake employee" means a probation and intake employee as such term is defined in paragraph (1) of subsection (a) of Code Section 15-11-24.3.

(b) Any person becoming an employee of the department at any time on or after July 1, 1993, as a result of a transfer of county probation and intake services to the department pursuant to the provisions of Code Section

15-11-24.3 shall have the options and rights provided for by this Code section. The options available to any such employee under this Code section must be exercised within 18 months after the date the applicable county probation and intake services are transferred to the department. Any such option shall be exercised by such employee notifying, in writing, the Board of Trustees of the Employees' Retirement System of Georgia, the governing authority of the applicable county, and, when applicable, the board of trustees or other managing body of any local retirement system of which the employee is a member. If the employee is a member of a local retirement system, such membership shall continue pending the exercise of an option provided by this Code section. The choice made by an employee in selecting an option provided by this Code section shall be irrevocable and may not at any time thereafter be rescinded or modified.

(c) If an employee subject to this Code section was a member of a local retirement system at the time the applicable county probation and intake services were transferred to the department, such employee may either continue active membership in the local retirement system as provided in this subsection or become a member of the Employees' Retirement System of Georgia and transfer creditable service as an employee of the local retirement system to the Employees' Retirement System of Georgia as provided in subsection (d) of this Code section. An employee electing to continue membership in a local retirement system shall have the right to continue such membership and the salary received by such employee as an employee of the department shall be the salary of such employee for all purposes under the local retirement system. Except as otherwise provided in this subsection for the use of certain employer contributions to offset required employee contributions, such employee shall continue to pay the employee contributions required under the local retirement system; and, for such purposes, the department may enter into an agreement with the board of trustees or other managing body of the local retirement system whereby the department may deduct such employee contributions from the compensation of the employee and pay the amount deducted to the local retirement system. Employer contributions for continued membership in the local retirement system shall be computed at the same percentage rate applicable to all other state employees on the basis of the state salary paid to such employees electing to continue membership in the local retirement system and shall be paid by the department when applicable to the local retirement system; provided, however, that, if the employer contributions paid by the department exceed the employer contributions applicable to all other employees of the local retirement system, the difference between the percentage rate of employer contributions paid by the department and the percentage rate of employer contributions applicable to all other employees of the local retirement system shall be applied to offset the percentage rate of employee contributions required of such state employees remaining in the local retirement system; provided, further, that, if the employer

contributions to be paid by the department under this subsection would exceed the total employee and employer contributions required under the local retirement system, the department shall only be required to pay the total amount of such employee and employer contributions required under the local retirement system. An employee continuing membership under a local retirement system under this subsection shall retain all rights, benefits, and privileges under the local retirement system in the same manner and to the same extent as if the employee remained an employee of the county; provided, however, that such employee shall not be entitled to health and life insurance benefits available to county employees. An employee electing to continue membership in a local retirement system shall not be and may not become a member of the Employees' Retirement System of Georgia.

(d) An employee who was a member of a local retirement system as provided in subsection (c) of this Code section may elect to become a member of the Employees' Retirement System of Georgia. Any such employee so electing shall receive creditable service under the Employees' Retirement System of Georgia for all accredited service previously rendered as an employee of the applicable local retirement system. For each employee so electing, the governing authority of the applicable county or the board of trustees or other managing body of the applicable local retirement system, within 30 days after receiving the notice provided for in subsection (b) of this Code section, shall pay to the Board of Trustees of the Employees' Retirement System of Georgia the total employee and employer contributions plus interest made by or on behalf of the employee to the local retirement system, together with accumulated interest thereon; provided, however, that the amount so transferred shall not exceed the amount necessary to grant the creditable service under the Employees' Retirement System of Georgia authorized by this subsection without creating any unfunded accrued liability, as a result of granting such creditable service, against the Employees' Retirement System of Georgia.

(e) If an employee subject to this Code section was not a member of a local retirement system at the time the applicable county juvenile detention system became a part of the state-wide juvenile detention system, such employee shall become a member of the Employees' Retirement System of Georgia effective on the date the county probation and intake services are transferred to the department. Any such member may purchase as creditable service under the Employees' Retirement System of Georgia all or any portion of previous actual service rendered by the member as an employee of the applicable county probation and intake system, except in those instances in which such member has retired or is receiving benefits from a local retirement system. Such creditable service may be purchased by the member's paying to the board of trustees all employee and employer contributions which would have been made if the employee had been a member of this retirement system, plus regular interest thereon. The time limitation for exercising options provided for in subsection (b) of this Code

section shall not apply to the purchase of creditable service under this subsection. Any eligible member may purchase such creditable service at any time during the first five years of membership in the Employees' Retirement System of Georgia. No service for which credit is granted pursuant to this subsection shall be used for credit in any local retirement system.

(f) To the extent this Code section conflicts with or is inconsistent with the provisions of a local retirement or pension system affected by this Code section, whether such local retirement or pension system was created by law or by local ordinance, the provisions of this Code section shall control. (Code 1981, § 47-2-295.1, enacted by Ga. L. 1994, p. 710, § 1; Ga. L. 1997, p. 1453, § 1; Ga. L. 2000, p. 20, § 24.)

47-2-295.2. County juvenile detention employees who are transferred into department.

(a) As used in this Code section, the term:

(1) "Department" means the Department of Juvenile Justice.

(2) "Local retirement system" means a retirement or pension system maintained by a county which includes as members thereof county juvenile detention employees who become employees of the department as a result of the county juvenile detention services' being transferred to the department, and the term includes any such retirement or pension system created by law or created by ordinance or resolution of the county under the home rule provisions of the Constitution of Georgia.

(b) Except as provided in subsection (c) of this Code section, any person who becomes an employee of the department as a result of a transfer of county juvenile detention services to the department shall become a member of this retirement system. Within 30 days of the day any such employee becomes a member of this retirement system, the board of trustees or other managing body of the applicable local retirement system shall pay to the board of trustees of this retirement system the total employee and employer contributions plus interest made by or on behalf of the employee to the local retirement system, together with accumulated interest thereon, and in addition the governing authority of the county may pay to the board of trustees of this retirement system on behalf of the employee such amount as such county governing authority deems appropriate, and the employee shall receive such creditable service in this retirement system as the total amount will allow without creating any accrued liability against this retirement system; provided, however, that no such person shall receive creditable service in excess of the accredited service previously rendered as an employee of the applicable local retirement system.

(c)(1) An employee subject to this Code section may elect to continue active membership in the local retirement system, and the salary received

by such employee as an employee of the department shall be the salary of such employee for all purposes under the local retirement system. Except as otherwise provided in this subsection, such employee shall continue to pay the employee contributions required under the local retirement system, and the department may enter into an agreement with the board of trustees or other managing body of the local retirement system whereby the department may deduct such employee contributions from the compensation of the employee and pay the amount deducted to the local retirement system. Employer contributions for continued membership in the local retirement system shall be computed at the same percentage rate applicable to all other state employees on the basis of the state salary paid to such employees electing to continue membership in the local retirement system and shall be paid by the department when applicable to the local retirement system; provided, however, that:

(A) If the employer contributions paid by the department exceed the employer contributions applicable to all other employees of the local retirement system, the difference between the percentage rate of employer contributions paid by the department and the percentage rate of employer contributions applicable to all other employees of the local retirement system shall be applied to offset the percentage rate of employee contributions required of such state employees remaining in the local retirement system; and

(B) If the employer contributions to be paid by the department under this subsection would exceed the total employee and employer contributions required under the local retirement system, the department shall only be required to pay the total amount of such employee and employer contributions required under the local retirement system.

(2) An employee continuing membership under a local retirement system under this subsection shall retain all rights, benefits, and privileges under the local retirement system in the same manner and to the same extent as if the employee remained an employee of the county; provided, however, that such employee shall not be entitled to health and life insurance benefits available to county employees. An employee electing to continue membership in a local retirement system shall not be and may not become a member of the Employees' Retirement System of Georgia.

(d) To the extent this Code section conflicts with or is inconsistent with the provisions of a local retirement or pension system affected by this Code section, whether such local retirement or pension system was created by law or by local ordinance, the provisions of this Code section shall control. (Code 1981, § 47-2-295.2, enacted by Ga. L. 1996, p. 277, § 1; Ga. L. 1997, p. 1453, § 1.)

47-2-296. County probation system employees.

(a) As used in this Code section, the term "local retirement system" means a retirement or pension system maintained by a county which includes as members thereof employees of the county probation system which becomes a part of the state-wide probation system, and the term includes any such retirement or pension created by law or created by ordinance or resolution of the county under the home rule provisions of the Constitution of Georgia.

(b) Any person becoming an employee of the state at any time on or after July 1, 1984, as a result of being employed by a county probation system which became a part of the state-wide probation system administered by the Department of Corrections shall have the options and rights provided for by this Code section, subject to the limitations of subsection (f) of this Code section. The options available to any such employee under this Code section must be exercised within six months after the date the applicable county probation system became a part of the state-wide probation system. The option provided by subsection (e) of this Code section must be exercised on or before the date the county probation system becomes a part of the state-wide probation system. Any such option shall be exercised by such employee notifying, in writing, the Board of Trustees of the Employees' Retirement System of Georgia, the commissioner of corrections, the governing authority of the applicable county, and, when applicable, the board of trustees or other managing body of any local retirement system of which the employee is a member. If the employee is a member of a local retirement system, such membership shall continue pending the exercise of an option provided by this Code section. The choice made by an employee in selecting an option provided by this Code section shall be irrevocable and may not at any time thereafter be rescinded or modified.

(c) If an employee subject to this Code section was a member of a local retirement system at the time the applicable county probation system became a part of the state-wide probation system, such employee, subject to the limitations of subsection (f) of this Code section, may either continue active membership in the local retirement system as provided in this subsection or become a member of the Employees' Retirement System of Georgia and transfer creditable service as an employee of the local retirement system to the Employees' Retirement System of Georgia as provided in subsection (d) of this Code section. Such employees who are subject to the provisions of subsection (e) of this Code section shall have the additional option to retire under the local retirement system, if qualified therefor, as provided in said subsection (e). An employee electing to continue membership in a local retirement system shall have the right to continue such membership and the salary received by such employee as an employee of the Department of Corrections or other state department shall be the salary of such employee for all purposes under the local retirement

system. If applicable to any such employee, any county supplement to the state salary of such employee shall be included as salary for the purposes of a local retirement system in which such employee continues membership. Except as otherwise provided in this subsection for the use of certain employer contributions to offset required employee contributions, such employee shall continue to pay the employee contributions required under the local retirement system; and, for such purposes, the Department of Corrections or other state department if the employee subsequently becomes employed by another department of the state government may enter into an agreement with the board of trustees or other managing body of the local retirement system whereby the department may deduct such employee contributions from the compensation of the employee and pay the amount deducted to the local retirement system. Employer contributions for continued membership in the local retirement system shall be computed at the same percentage rate applicable to all other state employees on the basis of the state salary paid to such employees electing to continue membership in the local retirement system and shall be paid by the Department of Corrections or by another state department when applicable to the local retirement system; provided, however, that, if the employer contributions paid by the Department of Corrections or other state department exceed the employer contributions applicable to all other employees of the local retirement system, the difference between the percentage rate of employer contributions paid by the Department of Corrections or other state department and the percentage rate of employer contributions applicable to all other employees of the local retirement system shall be applied to offset the percentage rate of employee contributions required of such state employees remaining in the local retirement system; provided, further, that, if the employer contributions to be paid by the Department of Corrections or other state department under this subsection would exceed the total employee and employer contributions required under the local retirement system, the Department of Corrections or other state department shall only be required to pay the total amount of such employee and employer contributions required under the local retirement system. An employee continuing membership under a local retirement system under this subsection shall retain all rights, benefits, and privileges under the local retirement system in the same manner and to the same extent as if the employee remained an employee of the county. An employee electing to continue membership in a local retirement system shall not be and may not become a member of the Employees' Retirement System of Georgia.

(d) An employee who was a member of a local retirement system as provided in subsection (c) of this Code section may elect to become a member of the Employees' Retirement System of Georgia, except as otherwise provided by subsection (f) of this Code section. Any such employee so electing may obtain creditable service under the Employees'

Retirement System of Georgia for all accredited service previously rendered as an employee of the applicable local retirement system. For each employee so electing, the governing authority of the applicable county or the board of trustees or other managing body of the applicable local retirement system, within 30 days after receiving the notice provided for in subsection (b) of this Code section, shall pay to the Board of Trustees of the Employees' Retirement System of Georgia a portion of the total employee contributions plus interest made by the employee to the local retirement system. This payment shall be equal to the employee contribution plus interest which would have been accumulated had the employee always been covered by the Employees' Retirement System of Georgia. Any additional amount, as determined by the Board of Trustees of the Employees' Retirement System of Georgia, shall be paid by the local retirement system to a maximum of prior county contributions plus interest. Any further additional sum required will be paid by the local governing authority. These two sums together with the contributions of transferring employees plus interest shall be sufficient to grant the creditable service under the Employees' Retirement System of Georgia authorized by this subsection without creating any accrued liability, as a result of granting such creditable service, against the Employees' Retirement System of Georgia. The employee contributions paid to the board of trustees under this subsection shall be deposited by the board into the annuity savings fund as a credit to the member. Other funds paid to the board of trustees under this subsection shall be deposited by the board into the pension accumulation fund. Upon receiving the payments provided for by this subsection, the board of trustees shall enter the creditable service provided for by this subsection upon the records of the member. The employee contributions in an amount exceeding those necessary to cover the period of creditable service as a state employee under the Employees' Retirement System of Georgia shall be refunded to the employee upon application to the board of trustees of the local retirement system.

(e) This subsection shall not apply to the employees of a county probation system of any county of this state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census. The employees of other county probation systems subject to the provisions of this Code section who were members of a local retirement system shall have the additional option of retiring under the local retirement system if such employees have sufficient creditable service under the local retirement system to qualify for retirement benefits. Such option may be exercised by any such employee making application for retirement to the board of trustees or other managing body of the local retirement system. Any such employee electing to retire under a local retirement system shall not be eligible to transfer any creditable service under the local retirement system to the Employees' Retirement System of Georgia and, if the employee accepts employment as an employee of the

Department of Corrections, shall become a member of the Employees' Retirement System of Georgia at the time the county probation system becomes a part of the state-wide probation system.

(f) This subsection shall apply only to employees of a county probation system of a county having a population of 600,000 or more according to the United States decennial census of 1990 or any future such census. The employees of any such county probation system who were members of a local retirement system and who have ten or more years of creditable service under the local retirement system at the time the county probation system becomes a part of the state-wide probation system shall not have the option to become members of the Employees' Retirement System of Georgia, and such employees shall continue active membership in the local retirement system. The provisions of subsection (c) of this Code section shall apply to such employees, except for the provisions of such subsection relative to the option to become members of the Employees' Retirement System of Georgia.

(g) If an employee subject to this Code section was not a member of a local retirement system at the time the applicable county probation system became a part of the state-wide probation system, such employee shall become a member of the Employees' Retirement System of Georgia effective on the date the county probation system became a part of the state-wide probation system. Any such member may purchase as creditable service under the Employees' Retirement System of Georgia all or any portion of previous actual service rendered by the member as an employee of the applicable county probation system, except in those instances in which such member has retired or is receiving benefits from a local retirement system. Such creditable service may be purchased by the member's paying to the board of trustees all employee and employer contributions, plus regular interest thereon, under the Employees' Retirement System of Georgia for the amount of creditable service claimed in an amount sufficient to grant creditable service under the Employees' Retirement System of Georgia authorized by this subsection without creating any accrued liability, as a result of granting such creditable service, against the Employees' Retirement System of Georgia. The basis for such employee and employer contributions shall be the compensation the member received upon first becoming an employee of the Department of Corrections. The time limitation for exercising options provided for in subsection (b) of this Code section shall not apply to the purchase of creditable service under this subsection. Any eligible member may purchase such creditable service at any time during the first five years of membership in the Employees' Retirement System of Georgia and parts of such creditable service may be purchased from time to time during such five-year period. The board of trustees may establish payment schedules for eligible members to purchase creditable service under this subsection.

(h)(1) The provisions of this subsection shall apply only to counties having a population of 550,000 or more according to the United States

decennial census of 1980 or any future such census which had a county probation system whose employees are subject to the provisions of this Code section.

(2) The governing authority of a county subject to this subsection is authorized to supplement the state salaries paid to employees of the Department of Corrections who were employees of the county's probation system prior to its becoming a part of the state-wide probation system. Such salary supplement, if any, shall be included in the salary of any such employee for all purposes under any local retirement system in which the employee remains a member pursuant to the authority or requirements of this Code section. Such salary supplement, if any, shall not be considered state salary for the purposes of any payments made from state funds to a local retirement system to reimburse such local retirement system for employer contributions that would be made under the Employees' Retirement System of Georgia if such employees had become members of the Employees' Retirement System of Georgia pursuant to the provisions of this Code section.

(i) To the extent this Code section conflicts with or is inconsistent with the provisions of a local retirement or pension system affected by this Code section, whether such local retirement or pension system was created by law or by local ordinance, the provisions of this Code section shall control. (Code 1981, § 47-2-296, enacted by Ga. L. 1983, p. 1809, § 1; Ga. L. 1985, p. 209, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1986, p. 1266, § 1; Ga. L. 1992, p. 2344, § 1; Ga. L. 2000, p. 131, § 1.)

JUDICIAL DECISIONS

State takeover of county system. — Since the General Assembly provided that, upon takeover of a county probation system by the state system, the employees of the county system could at their option become employees of the state system, performing the same

duties without a reduction in salary, and could continue participation in their county pension plans, the employees were not "retired by operation of law" under their pension plans. *Barnett v. Fulton County*, 255 Ga. 419, 339 S.E.2d 236 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 81A C.J.S., States, § 216.

47-2-297. Employees of county boards or departments of health in counties having population of 550,000 or more.

(a) This Code section shall apply only to counties, county boards and departments of health, and employees of county boards and departments of health of counties of this state having a population of 550,000 or more

according to the United States decennial census of 1980 or any future such census.

(b) As used in this Code section, the term:

(1) “Employee” means an employee of a county board or department of health of a county subject to the provisions of this Code section who:

(A) Is a member of a local retirement system; and

(B) Would be eligible for membership in and a member of the Employees’ Retirement System of Georgia if employed by a county board or department of health of a county other than a county subject to the provisions of this Code section.

(2) “Local retirement system” means a retirement or pension system maintained by a county which includes as members thereof employees of the county boards or departments of health, and the term includes any such retirement or pension system created by law or created by ordinance or resolution of the county under the home rule provisions of the Constitution of Georgia.

(3) “Salary supplement” means compensation paid from county funds to employees of county boards or departments of health in addition to the compensation paid to such employees from state funds or from state funding sources.

(c) The Department of Human Resources shall make payments to the governing authority of a county subject to the provisions of this Code section to partially reimburse the county for the cost incurred by the county in providing for the membership in a local retirement system of each employee. The amount of the payment for each employee shall be an amount equal to three-fourths of the amount which would be paid by the Department of Human Resources as the employer contribution to the Employees’ Retirement System of Georgia if the employee were a member of the retirement system. It is specifically provided, however, that such employer contributions shall be based on state compensation paid to the employee or on the amount paid from state funds to the county as compensation for the employee, and any salary supplement to such compensation shall not be considered in the determination of the amount of the employer contribution.

(d) The reimbursement payments provided for by subsection (c) of this Code section shall be paid for all service by an employee as a member of a local retirement system which is completed after the date that funding of this Code section begins as provided in subsection (f) of this Code section. When such funding begins, such reimbursement payments shall be paid to the county at the same time employer contribution would be paid by the Department of Human Resources to the Employees’ Retirement System of Georgia if the employee were a member of the retirement system.

(e) If at any time any employee becomes a member of the Employees' Retirement System of Georgia, the reimbursement payments provided for by this Code section shall cease for that employee on the effective date of membership in the Employees' Retirement System of Georgia.

(f) The payments to a county governing authority provided for by this Code section shall be contingent upon appropriations made by the General Assembly to the Department of Human Resources for the purpose of making such payments. To the extent that the General Assembly appropriates less than the amount necessary to pay the full amount provided for by this Code section, the amount otherwise payable shall be reduced in accordance with the amount actually appropriated by the General Assembly. (Code 1981, § 47-2-297, enacted by Ga. L. 1988, p. 920, § 1.)

Editor's notes. — For transfer of certain duties from the Department of Human Resources, see Ga. L. 2009, p. 453.

47-2-298. Employees of county departments of family and children services.

(a) As used in this Code section, the term “local retirement system” means a retirement or pension system maintained by a county which includes as members thereof employees of the county department of family and children services and the term includes any such retirement or pension system created by law or created by ordinance or resolution of the county under the home rule provisions of the Constitution of Georgia.

(b) Any employee or former employee of a county department of family and children services who is or was a member of a local retirement system and who is or becomes a member of this retirement system, subject to the requirements of this Code section, shall obtain creditable service under this retirement system as provided in this subsection. Upon notification in writing by the board of trustees of this retirement system to the board of trustees or other managing body of the local retirement system, the board of trustees or other managing body of the local retirement system shall transfer to this retirement system an amount equal to the employer contributions, plus regular interest thereon, which had been paid to the local retirement system on behalf of each employee and any employee contributions which have been paid to the local retirement system by or on behalf of each employee and have not been withdrawn from the local retirement system, plus regular interest thereon. The board of trustees of this retirement system shall determine the period of time that such amount will fund as creditable service under this retirement system without creating any additional accrued liability of the retirement system. The amount of creditable service so determined shall be the creditable service to which the member is entitled.

(c) Employees or former employees of a county department of family and children services were in service on July 1, 1996, and who are subject to the provisions of this Code section and who failed to exercise the option provided by this Code section by notification in writing to the board of trustees of this retirement system, the board of trustees or other managing body of the local retirement system, and to the county governing authority in a timely manner shall be forever barred from exercising such option. For employees or former employees of a county department of family and children services who become members of this retirement system after July 1, 1996, such election and notification must be made within six months of becoming a member of this retirement system. Any such employee failing to exercise the option granted by this Code section within such time limitation shall not at any time thereafter be eligible to become a member of this retirement system as an employee of a county department of family and children services. Any such employee shall make payment to the board of trustees of this retirement system of a sum equal to his or her employee contributions which had been paid to the local retirement system during the years of service for which credit is being claimed and thereafter shall not be entitled to receive any benefit from the local retirement system.

(d) Employees or former employees of a county department of family and children services who are or become members of this retirement system and who obtain credit for service pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334, except to the extent that said Code section prohibits obtaining prior service as creditable service as authorized by subsection (b) of this Code section.

(e) To the extent this Code section conflicts with or is inconsistent with the provisions of a local retirement or pension system affected by this Code section, whether such local retirement or pension system was created by law or by local ordinance, the provisions of this Code section shall control. (Code 1981, § 47-2-298, enacted by Ga. L. 1990, p. 993, § 1; Ga. L. 1991, p. 130, § 1; Ga. L. 1994, p. 738, § 1; Ga. L. 1996, p. 305, § 1; Ga. L. 2010, p. 1207, § 33/SB 436.)

The 2010 amendment, effective July 1, 2010, in subsection (c), in the first sentence, substituted “and who failed to” for “shall” in the middle and added “in a timely manner shall be forever barred from exercising such option” at the end, deleted the former second sentence, which read: “Such notification must be made by not later than December 31, 1996.”, and substituted “his or her” for “their” in the middle of the last sentence.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to

repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, ben-

efit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

JUDICIAL DECISIONS

Equal protection. — Equal protection rights of former employees of county department of family and children services were violated by a provision that significantly reduced retirement benefits to employees who

transferred to state employment after July 1, 1982, as compared to former employees who transferred before that date. *Employees' Ret. Sys. v. Martin*, 272 Ga. 535, 533 S.E.2d 68 (2000).

47-2-299. Creditable service for service as employee of private nonprofit hospital.

Repealed by Ga. L. 2010, p. 1207, § 34, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 47-2-299, enacted by Ga. L. 2002, p. 1288, § 1A.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

PART 10

EMPLOYEES OF CERTAIN STATE AUTHORITIES AND COMMISSIONS

47-2-310. Merit system of personnel administration for employees of Georgia Federal-State Shipping Point Inspection Service; membership in retirement system; contributions; creditable service.

(a) The Georgia Federal-State Shipping Point Inspection Service, hereinafter referred to as the “inspection service” in this Code section, is declared to be an adjunct of the Georgia Department of Agriculture, such inspection service assisting in the agricultural products inspection duties of that department. All employees of the inspection service shall be subject to a merit system of personnel administration established by the agencies which are parties to a cooperative agreement between the Consumer and Marketing Service of the United States Department of Agriculture and the Georgia Department of Agriculture. All employees shall perform services on the basis of merit, fitness, and efficiency. The establishment of this merit system prior to July 1, 1975, shall be a prerequisite to coverage of the inspection service under the retirement system.

(b) Any person employed by the inspection service on July 1, 1975, is authorized to become a member of Division A of the retirement system. Any

person first employed or reemployed by the inspection service after July 1, 1975, shall, as a condition of employment, become a member of Division A of the retirement system. In order to become or be required to be a member of the retirement system, an employee of the inspection service must be employed in this state in a position normally requiring actual performance of duty during not less than nine months of the year.

(c) The Georgia Department of Agriculture shall be responsible for making certain that the administrative officials of the inspection service shall deduct or collect from each member the employee contributions required by the retirement system and remit them to the retirement system as required by law or regulations. The Commissioner of Agriculture is authorized and directed to pay from the funds appropriated for the operation of the Georgia Department of Agriculture the employer contributions required by the retirement system or by regulations promulgated pursuant thereto. Such employer contributions shall be paid by the Commissioner upon receipt of an invoice from the retirement system.

(d) Any person who becomes a member of the retirement system under this Code section, upon certified proof of previous service with the inspection service, shall be eligible to receive up to five years of credit for such previous service by paying the regular employer and employee contributions, including accrued interest, that would have accumulated during such period of employment. In the computation of such contributions and interest, the compensation of such member shall be deemed to have been the same as the compensation such member received on the date he first became a member. For any member claiming creditable service under this subsection on and after July 1, 1983, the board of trustees shall calculate the period of time the contributions and interest provided for above will fund as creditable service under the retirement system without creating any additional accrued liability of the retirement system; and the amount of creditable service so determined shall be the creditable service to which the member is entitled. The inspection service shall be authorized to supplement contributions and interest provided for above in an amount, as determined by the board of trustees, which, together with such contributions and interest, will fully fund as creditable service the total amount of previous service claimed without creating any additional accrued liability of the retirement system, and in the event such supplement is paid by the inspection service to the board of trustees, the member shall be entitled to receive all such previous service as creditable service up to the maximum of five years. Credit for previous service shall be available to a member only after he has worked for the inspection service for one full year following July 1, 1975, and must be exercised, if at all, within one year after the time any such member becomes eligible to elect such option or by not later than January 1, 1984, whichever date is later.

(e) The board of trustees is authorized to promulgate all necessary rules and regulations for the implementation of this Code section, including, but

not limited to, regulations and rules dealing with any required reports of employment and remission of contributions by the administrative officials of the inspection service and the method for certification of proof of previous service with the inspection service.

(f) Any member who was a member of the retirement system prior to July 1, 1975, and who, prior to becoming a member of the retirement system, was employed by the inspection service shall be eligible to receive up to five years of creditable service under the retirement system for service rendered as an employee of the inspection service prior to becoming a member of the retirement system. In order to receive such creditable service, the member must pay to the board of trustees the employer and employee contributions which would have been paid to the retirement system during the period, not to exceed five years, of employment by the inspection service as if such employment had been rendered while a member of the retirement system, plus interest at the rate of 7 percent on such employer and employee contributions compounded annually from the time of the employment with the inspection service to the date of payment. The board of trustees may require such documentation as the board finds necessary to verify the period of employment with the inspection service and the compensation received for such employment. The board of trustees shall calculate the amount of payment required to obtain creditable service under this Code section and shall certify such amount to a member who applies for creditable service under this subsection. No more than a total of five years of service prior to July 1, 1975, as an employee of the inspection service may be obtained as creditable service under all provisions of this Code section. No creditable service may be obtained pursuant to the provisions of this subsection for any period for which creditable service has been or may be obtained under any other provision of this chapter.

(g)(1) Any member who was employed by the inspection service on July 1, 1975, and who was a member on that date shall be eligible to receive up to five years of creditable service under the retirement system for service rendered as an employee of the inspection service prior to becoming a member of the retirement system. Such service shall be in addition to the creditable service authorized by subsection (f) of this Code section. In order to receive such creditable service, the member must pay to the board of trustees the employee contributions of 5 percent of his or her salary on July 1, 1975, for each month of creditable service, together with interest at the rate of 4 percent compounded annually from July 1, 1975, to the date of payment. The board of trustees may require such documentation as the board finds necessary to verify the period of employment with the inspection service and the compensation received for such employment. The board of trustees shall calculate the amount of payment required to obtain creditable service under this Code section and shall certify such amount to a member who applies for creditable service under this paragraph.

(2) The inspection service is authorized to supplement, if necessary, the payment made to the board of trustees pursuant to paragraph (1) of this subsection from funds available to the inspection service.

(3) Payments made pursuant to paragraphs (1) and (2) of this subsection shall be made not later than January 1, 1997. The board shall determine whether the amount of creditable service purchased by the total contributions made pursuant to paragraphs (1) and (2) of this subsection would warrant, without creating any additional accrued liability of the retirement system, up to five years of creditable service.

(4) No creditable service may be obtained pursuant to the provisions of this subsection for any period for which creditable service has been or may be obtained under any other provision of this chapter. (Ga. L. 1975, p. 1494, § 1; Ga. L. 1983, p. 784, § 1; Ga. L. 1990, p. 556, § 1; Ga. L. 1996, p. 299, § 1.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1167 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 161, 316 et seq.

47-2-311. Credit for service by persons formerly employed by the Georgia Warm Springs Foundation; payments required in order to obtain credit.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 35, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1974, p. 130, § 1; Ga. L. 1982, p. 3, § 47.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-312. Merit system of personnel administration for employees of Georgia agricultural commodity commissions; membership in the retirement system; contributions; creditable service for prior employment.

(a) The Georgia agricultural commodity commissions are declared to be adjuncts of the Georgia Department of Agriculture, such commissions providing for the promotion of the production, marketing, sales, uses and

utilization, processing, and improvement of the agricultural products of this state and producers connected therewith. All employees of any of the agricultural commodity commissions set forth in Code Section 2-8-5 shall be subject to a merit system of personnel administration established by the commissions, pursuant to which such employees shall be employed. All employees shall perform services on the basis of merit, fitness, and efficiency. The establishment of this merit system prior to July 1, 1976, shall be a prerequisite to coverage of the commissions under the retirement system.

(b) Persons employed by any of the agricultural commodity commissions on July 1, 1976, may elect to become members of Division A of the retirement system; but persons entering or reentering into employment with any of the agricultural commodity commissions after July 1, 1976, shall, as a condition of employment, become members of Division A of the retirement system, provided that no person so employed shall become a member unless his position normally requires actual performance of duty during not less than nine months of the year. The commencement date for the inclusion of employees of any of the agricultural commodity commissions within the retirement system shall be July 1, 1976.

(c) The Georgia Department of Agriculture shall ensure that the employees' contributions required under this chapter are deducted and collected from each member and remitted to the retirement system; and the Commissioner of Agriculture is authorized and directed to take any necessary action to ensure that the employer contributions under this chapter are paid from the funds of the agricultural commodity commissions. Such employer contributions shall be paid by the Commissioner to the retirement system upon receipt of an invoice from the retirement system.

(d) The board of trustees is authorized to promulgate all necessary rules and regulations for the implementation of this Code section, including, but not limited to, regulations and rules dealing with any required reports of employment and remission of contributions by the administrative officials of the agricultural commodity commissions.

(e)(1) This subsection shall apply only to an employee of an agricultural commodity commission employed on July 1, 1976.

(2) An employee of an agricultural commodity commission who is subject to the provisions of this subsection shall, upon furnishing proof of prior employment to the board of trustees, be eligible to receive creditable service under this retirement system for prior employment as an employee of such commission, subject to the requirements of this subsection. Any such employee must pay to the board of trustees the employee contributions, plus accrued interest thereon at the rate of 5 percent per annum, compounded annually, which would have been paid

during the period of prior employment if the employee had been a member of the retirement system during such period. The commission shall pay from any funds available to the commission the employer contributions, plus accrued interest thereon at the rate of 5 percent per annum, compounded annually, which would have been paid during such period of prior employment. For a member claiming creditable service for prior employment under this subsection, the board of trustees shall determine the period of time that the payments to the board of trustees provided for under this subsection will fund as creditable service under the retirement system without creating any additional accrued liability of the retirement system. Except as otherwise provided in paragraph (3) of this subsection, the amount of creditable service so determined shall be the creditable service to which the member is entitled.

(3) The authority shall be authorized to supplement, if necessary, the payments made to the board of trustees under paragraph (2) of this subsection all or any part of the amount which the board of trustees determines will fully fund as creditable service the total amount of prior employment of the employee without creating any additional accrued liability of the retirement system. If such supplement is paid to the board of trustees by the commission, the employee shall receive such creditable service under the retirement system for prior employment as an employee of the commission as the amount so paid will fund without creating any additional accrued liability of the retirement system. (Ga. L. 1976, p. 481, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1987, p. 146, § 1; Ga. L. 1994, p. 339, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1197 et seq. Employees, § 316 et seq. 81A C.J.S., States, § 216.
C.J.S. — 67 C.J.S., Officers and Public

47-2-313. Merit system of personnel administration for officers and employees of Jekyll Island—State Park Authority; membership in retirement system; creditable service; contributions.

All eligible officers and employees of the Jekyll Island—State Park Authority shall be subject to a merit system of personnel administration as promulgated by that authority and under which all such officers and employees shall be selected on a basis of merit, fitness, and efficiency. All such officers and employees, except as otherwise provided in this Code section, are authorized to become members of the retirement system, provided that such membership shall become effective no earlier than April 1, 1958; provided, further, that any officer or employee of the authority who is already a member of the retirement system shall be entitled to credit for his total service with the authority. All specially classified maintenance and food service employees of the authority hired on or after July 1, 1987, and

paid on an hourly basis shall not be members of the retirement system and shall not be included under the health insurance plan for state employees as provided for in Article 1 of Chapter 18 of Title 45. There shall be paid from the funds appropriated for the operation of the Jekyll Island—State Park Authority all contributions required by this chapter. All such payments shall be in addition to the regular compensation allowed to such officers and employees. (Ga. L. 1958, p. 119, § 1; Ga. L. 1987, p. 1035, § 2.)

JUDICIAL DECISIONS

Cited in *Fouche v. Jekyll Island-State Park Auth.*, 713 F.2d 1518 (11th Cir. 1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1167 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 161, 316 et seq.

47-2-314. Membership in the retirement system of officers and employees of the Geo. L. Smith II Georgia World Congress Center Authority; creditable service; contributions.

All officers and employees of the Geo. L. Smith II Georgia World Congress Center Authority, established by Code Section 10-9-3, who are not already members of the retirement system may elect to become members on or after April 1, 1977. Any officer or employee of the authority who is already a member of the retirement system by virtue of services with another employer shall be entitled to credit for his services and shall not suffer any loss of such credit to which he is otherwise entitled. There shall be paid from funds appropriated or otherwise available for the operation of the Geo. L. Smith II Georgia World Congress Center Authority all employer contributions required under this chapter, including employer social security contributions. The commencement date shall be April 1, 1977. (Ga. L. 1977, p. 670, § 2.)

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 70 C.J.S., Pensions, § 73 et seq. 81A C.J.S., States, § 216.

47-2-315. Merit system of personnel administration for officers and employees of the Georgia Building Authority; membership in the retirement system; contributions.

All eligible officers and employees of the Georgia Building Authority shall be subject to a merit system of personnel administration as promulgated by the Georgia Building Authority under which all such officers and employees

shall be selected on a basis of merit, fitness, and efficiency. All such officers and employees are authorized to become members of the retirement system. There shall be paid from the funds appropriated for the operation of the Georgia Building Authority all contributions required by the retirement system. All such payments shall be in addition to the regular compensation allowed to such officers and employees, provided that membership shall not become effective before March 1, 1956. (Ga. L. 1956, p. 277, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1167 et seq. **C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 161, 316 et seq.

47-2-316. Membership in the retirement system of officers or employees of Georgia Agricultural Exposition Authority.

(a) As used in this Code section, the term “Georgia Agricultural Exposition Authority” or “authority” means the Georgia Agricultural Exposition Authority established by Part 8 of Article 7 of Chapter 3 of Title 12, known as the “Georgia Agricultural Exposition Authority Act.”

(b) Effective on July 1, 1988, or on first becoming officers or employees of the Georgia Agricultural Exposition Authority, all such officers and employees shall become members of the retirement system. Any officer or employee of the authority who was already a member of the retirement system on July 1, 1988, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 1988, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service. Except as otherwise provided in this subsection, any person becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(c) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated or otherwise available for the operation of the Georgia Agricultural Exposition Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-316, enacted by Ga. L. 1988, p. 201, § 1.)

47-2-317. Membership in the retirement system of officers and employees of the Georgia Agrirama Development Authority.

(a) As used in this Code section, the term “Georgia Agrirama Development Authority” or “authority” means the Georgia Agrirama Development Authority established by Chapter 3 of Title 12.

(b) Effective on July 1, 1988, or on first becoming officers or employees of the Georgia Agrirama Development Authority, all such officers and employees shall become members of the retirement system. Any officer or employee of the authority who was already a member of the retirement system on July 1, 1988, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 1988, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service. Except as otherwise provided in this subsection, any person becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(c) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated or otherwise available for the operation of the Georgia Agrirama Development Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter.

(d) Any officer or employee of the authority who, prior to becoming a member of the retirement system, was an officer or employee of the authority shall be eligible to receive creditable service under the retirement system for such service rendered as an officer or employee of the authority prior to becoming a member of the retirement system. In order to receive such creditable service, the member must pay to the board of trustees the employee contributions which would have been paid to the retirement system during the period of employment by the authority, as if such employment had been rendered while a member of the retirement system, plus interest at the rate of 5 percent thereon compounded annually from the time of the employment with the authority to the date of payment. The board of trustees may require such documentation as the board finds necessary to verify the period of employment with the inspection service and the compensation received for such employment. No creditable service may be obtained pursuant to the provisions of this subsection for any period for which creditable service has been or may be obtained under any other provision of this chapter. (Code 1981, § 47-2-317, enacted by Ga. L. 1988, p. 264, § 1; Ga. L. 1994, p. 332, § 1; Ga. L. 2002, p. 440, § 1.)

47-2-318. Membership in the retirement system of officers and employees of the Georgia Environmental Finance Authority; creditable service; contributions.

(a) As used in this Code section, the term:

(1) “Georgia Environmental Finance Authority” or “authority” means the Georgia Environmental Finance Authority established by Article 1 of Chapter 23 of Title 50, known as the “Georgia Environmental Finance Authority Act.”

(2) “Officer or employee” means the executive director of the authority and any other full-time employee of the authority employed pursuant to the provisions of paragraph (5) of subsection (b) of Code Section 50-23-5.

(3) “Proof of prior employment” means pay records, income tax withholding records, or other records of the authority or its predecessor agency which are sufficient to establish to the satisfaction of the board of trustees the prior employment record of an officer or employee of the authority.

(4) “Predecessor agency” means the Georgia Development Authority provided for by Chapter 10 of Title 50.

(b) Effective July 1, 1988, or on the date of employment, each officer or employee of the authority shall become a member of the retirement system.

(c)(1) This subsection shall apply only to an officer or employee of the authority holding office or employed on July 1, 1988, who, prior to becoming such an officer or employee or an officer or employee of the predecessor agency, had 11 or more years of creditable service under the retirement system for which contributions to the retirement system have not been withdrawn.

(2) An officer or employee of the authority who is subject to the provisions of this subsection shall, upon furnishing proof of prior employment to the board of trustees, be eligible to receive creditable service under this retirement system for prior employment as an officer or employee of the authority or its predecessor agency, subject to the requirements of this subsection. Any such officer or employee must pay to the board of trustees the employee contributions, plus accrued regular interest thereon, which would have been paid during the period of prior employment if the officer or employee had been a member of the retirement system during such period. The authority shall be authorized to pay from any funds available to the authority the employer contributions, plus accrued regular interest thereon, which would have been paid during such period of prior employment. For a member claiming creditable service for prior employment under this subsection, the board

of trustees shall determine the period of time that the payments to the board of trustees provided for under this subsection will fund as creditable service under the retirement system without creating any additional accrued liability of the retirement system. Except as otherwise provided in paragraph (3) of this subsection, the amount of creditable service so determined shall be the creditable service to which the member is entitled.

(3) The authority shall be authorized to supplement, if necessary, the payments made to the board of trustees under paragraph (2) of this subsection in an amount, as determined by the board of trustees, which will fully fund as creditable service the total amount of prior employment of the officer or employee without creating any additional accrued liability of the retirement system. If such supplement is paid to the board of trustees by the authority, the officer or employee shall receive full creditable service under the retirement system for all prior employment as an officer or employee of the authority.

(4) An officer or employee of the authority who is subject to the provisions of this subsection shall have the same membership status under the retirement system which the person had during the person's previous service as a member of the retirement system. Nothing in this subsection shall be construed to limit the right of an officer or employee of the authority who is subject to the provisions of this subsection to retain or reestablish creditable service for previous service as a member of the retirement system.

(d) Any officer or employee of the authority who was already a member of the retirement system on July 1, 1988, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 1988, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service.

(e) Except as otherwise provided in subsections (c) and (d) of this Code section, an officer or employee of the authority becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(f) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated to or otherwise available for the operation of the Georgia Environmental Finance Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-318, enacted by Ga. L. 1988, p. 1490, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2010, p. 197, § 1/HB 320.)

The 2010 amendment, effective July 1, 2010, substituted “Georgia Environmental Finance Authority” for “Georgia Environmental Facilities Authority” three times in paragraph (a)(1) and at the end of the first sentence of subsection (f).

Editor’s notes. — Ga. L. 2010, p. 197, § 2, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2010; however, this Act shall only

become effective on July 1, 2010, upon the passing of an Act to change the name of the Georgia Environmental Facilities Authority to the Georgia Environmental Finance Authority. If such Act is not passed, this Act shall not become effective and shall stand repealed in its entirety on July 1, 2010.” Ga. L. 2010, p. 949, § 1, which provided for the name change, became effective July 1, 2010.

47-2-319. Membership in the retirement system of officers and employees of the Georgia Hazardous Waste Management Authority; contributions.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 36, effective July 1, 2010.

Editor’s notes. — This Code section was based on Code 1981, § 47-2-319, enacted by Ga. L. 1990, p. 527, § 2.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-2-320. Membership in retirement system of officers and employees of GeorgiaNet Authority; creditable service; contributions.

(a) As used in this Code section, the term:

(1) “GeorgiaNet Authority” or “authority” means the GeorgiaNet Authority established by Chapter 25 of Title 50.

(2) “Officer or employee” means the executive director of the authority and any other full-time employee of the authority employed pursuant to the provisions of subsection (d) of Code Section 50-25-2.

(3) “Proof of prior employment” means pay records, income tax withholding records, or other records of the authority which are sufficient to establish to the satisfaction of the board of trustees the prior employment record of an officer or employee of the authority.

(b) Effective July 1, 1992, or on the date of employment, each officer or employee of the authority shall become a member of the retirement system.

(c)(1) This subsection shall apply only to an officer or employee of the authority holding office or employed on July 1, 1992, who, prior to becoming such an officer or employee was a member of the retirement

system and whose contributions to the retirement system have not been withdrawn.

(2) An officer or employee of the authority who is subject to the provisions of this subsection shall, upon furnishing proof of prior employment to the board of trustees, be eligible to receive creditable service under this retirement system for prior employment as an officer or employee of the authority, subject to the requirements of this subsection. Any such officer or employee must pay to the board of trustees the employee contributions which would have been paid during the period of prior employment if the officer or employee had been a member of the retirement system during such period. The authority shall be authorized to pay from any funds available to the authority the employer contributions which would have been paid during such period of prior employment. For a member claiming creditable service for prior employment under this subsection, the board of trustees shall determine the period of time that the payments to the board of trustees provided for under this subsection will fund as creditable service under the retirement system without creating any additional accrued liability of the retirement system. Except as otherwise provided in paragraph (3) of this subsection, the amount of creditable service so determined shall be the creditable service to which the member is entitled.

(3) The authority shall be authorized to supplement, if necessary, the payments made to the board of trustees under paragraph (2) of this subsection in an amount, as determined by the board of trustees, which will fully fund as creditable service the total amount of prior employment of the officer or employee without creating any additional accrued liability of the retirement system. If such supplement is paid to the board of trustees by the authority, the officer or employee shall receive full creditable service under the retirement system for all prior employment as an officer or employee of the authority.

(4) An officer or employee of the authority who is subject to the provisions of this subsection shall have the same membership status under the retirement system which the person had during the person's previous service as a member of the retirement system. Nothing in this subsection shall be construed to limit the right of an officer or employee of the authority who is subject to the provisions of this subsection to retain or reestablish creditable service for previous service as a member of the retirement system.

(d) Any officer or employee of the authority who was already a member of the retirement system on July 1, 1992, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 1992, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service.

(e) Except as otherwise provided in subsections (c) and (d) of this Code section, an officer or employee of the authority becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(f) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated to or otherwise available for the operation of the GeorgiaNet Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-320, enacted by Ga. L. 1992, p. 2117, § 1.)

47-2-321. Membership in the retirement system of officers and employees of the Lake Lanier Islands Development Authority; creditable service; contributions.

(a) As used in this Code section, the term:

(1) “Lake Lanier Islands Development Authority” or “authority” means the Lake Lanier Islands Development Authority established by Part 3 of Article 7 of Chapter 3 of Title 12.

(2) “Officer or employee” means the executive director of the authority and any other full-time employee of the authority employed pursuant to the provisions of paragraph (3) of Code Section 12-3-314.

(3) “Proof of prior employment” means pay records, income tax withholding records, or other records of the authority which are sufficient to establish to the satisfaction of the board of trustees the prior employment record of an officer or employee of the authority.

(b) Effective July 1, 1994, or on the date of employment, each officer or employee of the authority shall become a member of the retirement system.

(c)(1) This subsection shall apply only to an officer or employee of the authority holding office or employed on July 1, 1994.

(2) An officer or employee of the authority who is subject to the provisions of this subsection shall, upon furnishing proof of prior employment to the board of trustees, be eligible to receive creditable service under this retirement system for prior employment as an officer or employee of the authority, subject to the requirements of this subsection. Any such officer or employee must pay to the board of trustees no later than October 1, 1994, the employee contributions which would have been paid during the period of prior employment if the officer or employee had been a member of the retirement system during such period together with regular interest thereon. The authority shall be

authorized to pay from any funds available to the authority the employer contributions which would have been paid during such period of prior employment. For a member claiming creditable service for prior employment under this subsection, the board of trustees shall determine the period of time that the payments to the board of trustees provided for under this subsection will fund as creditable service under the retirement system without creating any additional accrued liability of the retirement system. Except as otherwise provided in paragraph (3) of this subsection, the amount of creditable service so determined shall be the creditable service to which the member is entitled.

(3) An officer or employee shall have the option to transfer all or a portion of his or her vested interest in the pension plan maintained by the authority prior to July 1, 1994, to satisfy all or a portion of the cost to receive creditable service allowed pursuant to paragraph (2) of this subsection. Any funds transferred pursuant to such option shall be credited to the officer's or employee's annuity account established by the retirement system. The authority shall be authorized, but not required, to supplement such amount so transferred. The officer or employee shall receive such creditable service as the combination of funds transferred or paid for or on behalf of the employee would warrant without creating any additional accrued liability of the retirement system, up to the maximum amount of creditable service allowed by paragraph (2) of this subsection.

(d) Any officer or employee of the authority who was already a member of the retirement system on July 1, 1994, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 1994, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service.

(e) Except as otherwise provided in subsections (c) and (d) of this Code section, an officer or employee of the authority becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(f) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated to or otherwise available for the operation of the Lake Lanier Islands Development Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-321, enacted by Ga. L. 1994, p. 396, § 1.)

Code Commission notes. — Ga. L. 1994, p. 396, § 1, Ga. L. 1994, p. 715, § 1, and Ga. L. 1994, p. 718, § 1 all enacted a Code Section 47-2-321. Pursuant to Code Section 28-9-5, the Code sections enacted by Ga. L. 1994, p. 715, § 1 and Ga. L. 1994, p. 718, § 1 were renumbered as Code Sections 47-2-322 and 47-2-323, respectively.

47-2-322. Membership in retirement system of officers and employees of Georgia Music Hall of Fame Authority; creditable service; contributions.

(a) As used in this Code section, the term:

(1) “Georgia Music Hall of Fame Authority” or “authority” means the Georgia Music Hall of Fame Authority established by Part 10 of Article 7 of Chapter 3 of Title 12.

(2) “Officer or employee” means the executive director of the authority and any other full-time employee of the authority employed pursuant to the provisions of paragraph (3) of Code Section 12-3-524.

(3) “Proof of prior employment” means pay records, income tax withholding records, or other records of the authority which are sufficient to establish to the satisfaction of the board of trustees the prior employment record of an officer or employee of the authority.

(b) Effective July 1, 1994, or on the date of employment, each officer or employee of the authority shall become a member of the retirement system.

(c)(1) This subsection shall apply only to an officer or employee of the authority holding office or employed on July 1, 1994.

(2) An officer or employee of the authority who is subject to the provisions of this subsection shall, upon furnishing proof of prior employment to the board of trustees, be eligible to receive creditable service under this retirement system for prior employment as an officer or employee of the authority, subject to the requirements of this subsection. Any such officer or employee must pay to the board of trustees the employee contributions which would have been paid during the period of prior employment if the officer or employee had been a member of the retirement system during such period. The authority shall be authorized to pay from any funds available to the authority the employer contributions which would have been paid during such period of prior employment. For a member claiming creditable service for prior employment under this subsection, the board of trustees shall determine the period of time that the payments to the board of trustees provided for under this subsection will fund as creditable service under the retirement system without creating any additional accrued liability of the retirement system. Except as otherwise provided in paragraph (3) of this subsection, the amount of creditable service so determined shall be the creditable service to which the member is entitled.

(3) The authority shall be authorized to supplement, if necessary, the payments made to the board of trustees under paragraph (2) of this subsection in an amount, as determined by the board of trustees, which will fully fund as creditable service the total amount of prior employment

of the officer or employee without creating any additional accrued liability of the retirement system. If such supplement is paid to the board of trustees by the authority, the officer or employee shall receive full creditable service under the retirement system for all prior employment as an officer or employee of the authority.

(4) An officer or employee of the authority who is subject to the provisions of this subsection shall have the same membership status under the retirement system which the person had during the person's previous service as a member of the retirement system. Nothing in this subsection shall be construed to limit the right of an officer or employee of the authority who is subject to the provisions of this subsection to retain or reestablish creditable service for previous service as a member of the retirement system.

(d) Any officer or employee of the authority who was already a member of the retirement system on July 1, 1994, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 1994, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service.

(e) Except as otherwise provided in subsections (c) and (d) of this Code section, an officer or employee of the authority becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(f) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated to or otherwise available for the operation of the Georgia Music Hall of Fame Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-322, enacted by Ga. L. 1994, p. 715, § 1.)

Code Commission notes. — Ga. L. 1994, p. 396, § 1, Ga. L. 1994, p. 715, § 1, and Ga. L. 1994, p. 718, § 1 all enacted a Code Section 47-2-321. Pursuant to Code Section 28-9-5, the Code sections enacted by Ga. L. 1994, p. 715, § 1 and Ga. L. 1994, p. 718, § 1 were renumbered as Code Sections 47-2-322 and 47-2-323, respectively.

47-2-323. Membership in retirement system of employees of Georgia Public Defender Standards Council; creditable service; contributions.

(a) As used in this Code section, the term:

(1) "Council" means the Georgia Public Defender Standards Council established by Code Section 17-12-3.

(2) “Employee” means any full-time employee of the council.

(3) “Proof of prior employment” means pay records, income tax withholding records, or other records of the council which are sufficient to establish to the satisfaction of the board of trustees the prior employment record of an employee of the council.

(b) Effective July 1, 1994, or on the date of employment, each employee of the council shall become a member of the retirement system.

(c)(1) This subsection shall apply only to an employee of the council employed by the council prior to July 1, 1994.

(2) An employee of the council who is subject to the provisions of this subsection shall, upon furnishing proof of prior employment to the board of trustees, be eligible to receive creditable service under this retirement system for prior employment as an employee of the council, subject to the requirements of this subsection. Any such employee must pay to the board of trustees the employee contributions which would have been paid during the period of prior employment if the employee had been a member of the retirement system during such period. The council shall pay from any funds available to the council the employer contributions which would have been paid during such period of prior employment. For a member claiming creditable service for prior employment under this subsection, the board of trustees shall determine the period of time that the payments to the board of trustees provided for under this subsection will fund as creditable service under the retirement system without creating any additional accrued liability of the retirement system. Except as otherwise provided in paragraph (3) of this subsection, the amount of creditable service so determined shall be the creditable service to which the member is entitled.

(3) The council shall be authorized to supplement, if necessary, the payments made to the board of trustees under paragraph (2) of this subsection in an amount, as determined by the board of trustees, which will fully fund as creditable service the total amount of prior employment of the employee without creating any additional accrued liability of the retirement system. If such supplement is paid to the board of trustees by the council, the employee shall receive full creditable service under the retirement system for all prior employment as an employee of the council.

(d) Any employee of the council who was already a member of the retirement system on July 1, 1994, and any member of the retirement system who, without any break in service, becomes an employee of the council on or after July 1, 1994, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service.

(e) Except as otherwise provided in subsection (d) of this Code section, an employee of the council becoming a member of the retirement system

pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(f) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated to or otherwise available for the operation of the council. The council shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-323, enacted by Ga. L. 1994, p. 718, § 1; Ga. L. 2004, p. 596, § 1.)

Code Commission notes. — Ga. L. 1994, p. 396, § 1, Ga. L. 1994, p. 715, § 1, and Ga. L. 1994, p. 718, § 1 all enacted a Code Section 47-2-321. Pursuant to Code Section 28-9-5, the Code sections enacted by Ga. L. 1994, p. 715, § 1 and Ga. L. 1994, p. 718, § 1 were renumbered as Code Sections 47-2-322 and 47-2-323, respectively.

47-2-324. Membership in retirement system of officers and employees of the North Georgia Mountains Authority; creditable service; contributions.

(a) As used in this Code section, the term:

(1) “North Georgia Mountains Authority” or “authority” means the North Georgia Mountains Authority established by Part 10 of Article 7 of Chapter 3 of Title 12.

(2) “Officer or employee” means the executive director of the authority and any other full-time employee of the authority employed pursuant to the provisions of paragraph (3) of Code Section 12-3-294.

(3) “Proof of prior employment” means pay records, income tax withholding records, or other records of the authority which are sufficient to establish to the satisfaction of the board of trustees the prior employment record of an officer or employee of the authority.

(b) Effective July 1, 1996, or on the date of employment, each officer or employee of the authority shall become a member of the retirement system.

(c)(1) This subsection shall apply only to an officer or employee of the authority holding office or employed on July 1, 1996.

(2) An officer or employee of the authority who is subject to the provisions of this subsection shall, upon furnishing proof of prior employment to the board of trustees not later than December 31, 1996, or six months after the date of employment, whichever date is later, be eligible to receive creditable service under this retirement system for prior employment as an officer or employee of the authority, subject to the requirements of this subsection. Any such officer or employee must pay to the board of trustees the employee contributions which would

have been paid during the period of prior employment if the officer or employee had been a member of the retirement system during such period. The authority shall be authorized to pay from any funds available to the authority the employer contributions which would have been paid during such period of prior employment. For a member claiming creditable service for prior employment under this subsection, the board of trustees shall determine the period of time that the payments to the board of trustees provided for under this subsection will fund as creditable service under the retirement system without creating any additional accrued liability of the retirement system. Except as otherwise provided in paragraph (3) of this subsection, the amount of creditable service so determined shall be the creditable service to which the member is entitled.

(3) An officer or employee shall have the option to transfer all or a portion of his or her vested interest in the pension plan maintained by the authority prior to July 1, 1996, to satisfy all or a portion of the cost to receive creditable service allowed pursuant to paragraph (2) of this subsection. Any funds transferred pursuant to such option shall be credited to the officer's or employee's annuity account established by the retirement system. The authority shall be authorized, but not required, to supplement such amount so transferred. The officer or employee shall receive such creditable service as the combination of funds transferred or paid for or on behalf of the employee would warrant without creating any additional accrued liability of the retirement system, up to the maximum amount of creditable service allowed by paragraph (2) of this subsection.

(d) Any officer or employee of the authority who was already a member of the retirement system on July 1, 1996, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 1994, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service.

(e) Except as otherwise provided in subsections (c) and (d) of this Code section, an officer or employee of the authority becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(f) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated to or otherwise available for the operation of the North Georgia Mountains Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-324, enacted by Ga. L. 1996, p. 719, § 1.)

47-2-325. Membership in retirement system of prior employees of the Foundation for Public Broadcasting in Georgia, Inc.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 37, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 47-2-325, enacted by Ga. L. 1998, p. 169, § 1.

Ga. L. 2010, p. 1207 § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-2-326. Georgia Rail Passenger Authority retirement system; membership; contributions.

(a) As used in this Code section, the term "Georgia Rail Passenger Authority" or "authority" means that authority created by Article 9 of Chapter 9 of Title 46, the "Georgia Rail Passenger Authority Law."

(b) Effective July 1, 2002, or on the date of employment, whichever date is later, each officer or employee of the authority shall become a member of the retirement system.

(c) Any officer or employee of the authority who was already a member of the retirement system on July 1, 2002, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 2002, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service.

(d) Except as otherwise provided in subsection (c) of this Code section, an officer or employee of the authority becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(e) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated to or otherwise available for the operation of the Georgia Rail Passenger Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-326, enacted by Ga. L. 2002, p. 1291, § 1.)

47-2-327. Employees of the State Road and Tollway Authority to become members of the retirement system; status; employer and employee contributions.

(a) As used in this Code section, the term “State Road and Tollway Authority” or “authority” means that authority continued by Article 2 of Chapter 10 of Title 32, relating to the State Road and Tollway Authority.

(b) Effective July 1, 2006, or on the date of employment, whichever date is later, each officer or employee of the authority shall become a member of the retirement system.

(c) Any officer or employee of the authority who was already a member of the retirement system on July 1, 2006, and any member of the retirement system who, without any break in service, becomes an officer or employee of the authority on or after July 1, 2006, shall continue in the same membership status without any interruption in membership service and without the loss of any creditable service.

(d) Except as otherwise provided in subsection (c) of this Code section, an officer or employee of the authority becoming a member of the retirement system pursuant to the provisions of this Code section shall be subject to the provisions of Code Section 47-2-334.

(e) All employer contributions, including employee contributions made by the employer on behalf of members, which are required by this chapter shall be made for members who are subject to the provisions of this Code section from funds appropriated to or otherwise available for the operation of the State Road and Tollway Authority. The authority shall deduct from the salaries payable to such members the additional employee contributions required by this chapter. (Code 1981, § 47-2-327, enacted by Ga. L. 2006, p. 174, § 1/SB 177.)

ARTICLE 9

MISCELLANEOUS PROVISIONS

47-2-330. Application of other state funded pension or retirement programs to members or beneficiaries, their surviving spouses, or dependents.

Except as otherwise specifically provided in this chapter, no program of pensions or retirement benefits for employees, their surviving spouses, or dependents, which program is funded wholly or partially by the state, shall apply to members or beneficiaries of this retirement system, their surviving spouses, or dependents. (Ga. L. 1949, p. 138, § 12; Ga. L. 1981, p. 1447, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Other retirement provisions cannot vary this chapter's provisions. — Prohibition evidenced by Ga. L. 1949, p. 138, § 12 (see O.C.G.A. § 47-2-330) should be read to prevent the operation of other retirement laws to vary the provisions of Ga. L. 1949, p. 138 et seq. (see O.C.G.A. Ch. 2, T. 47) as applicable to members or beneficiaries, or their widows or dependents. 1979 Op. Att'y Gen. No. 79-15.

Cessation of benefits to retired teacher not required. — Statute does not require the cessation of retirement benefits from the Teachers Retirement System of Georgia to a retiree who was subsequently employed by an agency covered under the Employees' Retirement System of Georgia. 1979 Op. Att'y Gen. No. 79-15 (see O.C.G.A. § 47-2-330).

47-2-331. Reporting of employee contributions for federal and state income tax purposes.

Any other provisions of law to the contrary notwithstanding, all employee contributions toward retirement allowances, social security benefits, and group term life insurance shall be included in each employee's gross income reported for federal and state income tax purposes. This Code section shall not pertain to employer contributions or to employee contributions made by employers on behalf of employees. (Ga. L. 1972, p. 546, § 1; Ga. L. 1980, p. 925, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 444 et seq.

47-2-332. Exemption of rights and benefits from taxes, legal process, and assignment of retirement system property as public property; exemptions for retirement system property.

(a) The right to a pension, annuity, retirement allowance, return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit, or any other right accrued or accruing to any person under this chapter and the moneys in the various accounts created by this chapter are:

(1) Exempt from any state, county, or municipal tax, except as provided in Code Section 48-7-27;

(2) Exempt from levy and sale, garnishment, attachment, or any other process whatsoever; and

(3) Not assignable except as otherwise specifically provided in this chapter.

(b) The tangible, intangible, real, personal, or mixed property, investments, or assets of the retirement system of whatever kind or nature and the

earnings or proceeds derived from such property, investments, or assets are public property and are:

(1) Exempt from taxation by the state or by any county, municipality, authority, or political subdivision of this state; and

(2) Exempt from levy and sale, garnishment, attachment, or any other process whatsoever.

(c) The transfer or sale of tangible, real, personal, or mixed property, investments, or assets to or from the retirement system and the instruments of such transfer or sale shall be exempt from any tax on such sales, transfers, or instruments, which tax is levied by the state or by any county, authority, municipality, or political subdivision of this state. (Ga. L. 1949, p. 138, § 9; Ga. L. 1976, p. 611, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 2000, p. 1449, § 2.)

JUDICIAL DECISIONS

Payment of benefits under divorce decree unauthorized. — Divorce decree could not properly order the Employees Retirement System of Georgia to pay retirement benefits directly to the ex-spouse of an employee. *Bryant v. Employees Retirement Sys.*, 216 Ga. App. 737, 455 S.E.2d 839 (1995).

Atlanta hotel-motel excise tax is a tax on the person occupying a guest room, not on the “transfer” of the room, and not exempt under O.C.G.A. § 47-2-332. *Teachers Retirement Sys. v. City of Atlanta*, 249 Ga. 196, 288 S.E.2d 200 (1982).

Property held by the retirement systems is not held for the benefit of private citizens; it is held for the benefit of public employees for whom the General Assembly has created retirement systems. This includes properties

which produce income, such as cabins in state parks and the hotel facilities at the continuing education center at the University of Georgia. *Teachers Retirement Sys. v. City of Atlanta*, 249 Ga. 196, 288 S.E.2d 200 (1982).

Retirement benefits subject to state income tax. — Subjecting retirement benefits of retired employees to state income taxation did not violate the constitutional prohibition against state laws impairing the obligation of contracts since the employees had no vested right to an irrevocable exemption which was invalid under Ga. Const. 1983, Art. VII, Sec. I, Para. I. *Parrish v. Employees' Retirement Sys.*, 260 Ga. 613, 398 S.E.2d 353 (1990), cert. denied, 500 U.S. 353, 111 S. Ct. 2016, 114 L. Ed. 2d 103 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Combination of factors constitutes assignment in fact. — Combination of an order to send funds accruing under Ga. L. 1949, p. 138 et seq. (see O.C.G.A. Ch. 2, T. 47) to the credit union, power of attorney authorizing deposit of the funds, and a right of offset, constitutes an assignment in fact. 1980 Op. Att'y Gen. No. 80-110.

Effect of arrangement, rather than form, is material, so any method for transferring control of retirement rights to the credit union would be unlawful. If the purported or practical effect of an arrangement is to deprive an employee of control over the employee's retirement rights, then it is im-

proper to establish the arrangement. 1980 Op. Att'y Gen. No. 80-110.

No assets of Employees' Retirement System are encumberable by lien. — None of the assets of the Employees' Retirement System, including funds held in members' annuity savings fund accounts, can be encumbered by a lien created to secure an unreimbursed travel advance; however, such a lien can attach to other funds due the employee by the state. 1980 Op. Att'y Gen. No. 80-114.

Pending investigation does not permit withholding earned compensation. — Department cannot withhold earned compen-

sation from an employee who has been dismissed from service because of an effort to sell state equipment, if an investigation is underway to determine whether or not the employee is indebted to the state because of previous sales of such equipment. 1958-59 Op. Att'y Gen. p. 186.

Retirement system cannot send to state credit unions refunds of contribution checks payable to members. 1968 Op. Att'y Gen. No. 68-255.

Member prohibited from assigning rights in life insurance policy. — Member of the retirement system is prohibited by law from

assigning the ownership rights in the member's group term life insurance policy to another person. 1977 Op. Att'y Gen. No. 77-18.

Member entitled to change beneficiaries at any time. — Any member of the retirement system covered under the life insurance provisions has the right, under Ga. L. 1977, p. 670, § 1 (see O.C.G.A. § 47-2-128) and the terms of the member's policy, to change the member's beneficiaries at any time, assuming there is no judicial decision or statutory prohibition to the contrary. 1977 Op. Att'y Gen. No. 77-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 31 Am. Jur. 2d, Exemptions, § 94 et seq. 71 Am. Jur. 2d, State and Local Taxation, § 444 et seq.

ALR. — Validity of statute or ordinance providing for pensions for municipal employees, 37 ALR 1162.

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711.

47-2-333. Attempts to defraud the retirement system by false statements or falsified records; adjustments of erroneous payments.

(a) Any person who shall knowingly make any false statements or shall falsify or permit to be falsified any records of the retirement system in an attempt to defraud the system shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$500.00, imprisonment not exceeding 12 months, or both.

(b) If any change or error in the records of the retirement system results in any member or beneficiary receiving from it more or less than he would have been entitled to receive had the records been correct, the board of trustees shall have the power to correct such error and to adjust the payments as far as practicable and in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (Ga. L. 1949, p. 138, § 10.)

OPINIONS OF THE ATTORNEY GENERAL

Former member cannot claim increase by law authorizing additional benefits. — Primary "object" or purpose of the language in Ga. L. 1951, pp. 394 and 396 (see O.C.G.A. § 47-2-70(c)) is to prevent a former member presently receiving a retirement benefit from claiming increased benefits as a result of an amendment to the law authorizing such additional benefits to existing mem-

bers; this was not intended to prevent a former member from obtaining service credits or benefits which the member was rightfully entitled to prior to the member's retirement, but which the member never received by virtue of an honest mistake or error in the member's records. 1976 Op. Att'y Gen. No. 76-58.

Correct records for claimed creditable

armed forces' service. — Board of trustees has the statutory authority to correct the board's records and extend to a former member the appropriate amount of claimed

creditable service for service in the armed forces of the United States. 1977 Op. Att'y Gen. No. 77-24.

47-2-334. Service retirement allowance; calculation; employee membership contributions; employer contributions; optional membership; conditions; construction of provision.

(a) Except where indicated clearly to the contrary by the context, the word "member" as used in this Code section shall mean any employee who first or again becomes a member of the Employees' Retirement System of Georgia on or after July 1, 1982. From and after July 1, 1982, every person first or again becoming an employee entitled to a new membership in the Employees' Retirement System of Georgia shall become a member subject to this Code section.

(b)(1) Every member subject to this Code section shall, upon becoming eligible under the provisions of this chapter, be entitled to a service retirement allowance, which shall consist of:

(A) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of retirement; and

(B) A monthly pension which, together with the annuity, shall provide a total retirement allowance equal to more than 1.5 percent, but not greater than 2 percent, the actual percent to be set by the board of trustees in direct relation to the amount of increased appropriations provided by the General Assembly to fund the provisions of this paragraph, of the member's highest average monthly earnable compensation during a period of 24 consecutive calendar months while a member of the retirement system, multiplied by the number of the member's years of creditable service.

(2) For members subject to this Code section, the calculation of retirement benefits or allowances for any other form or type of retirement shall also be based upon the calculations provided for in paragraph (1) of this subsection.

(c) From and after July 1, 1990, every member subject to this Code section shall contribute employee membership contributions in an amount not less than 1 percent nor greater than 1 ½ percent of earnable compensation, which shall be deducted by each employer from the earnable compensation of each member for each and every payroll period and paid monthly to the board of trustees; provided, however, that any reduction in such percentage shall be based upon the recommendation of the actuary of the board of trustees, the maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board,

and such other factors as the board deems relevant. Of the percentage deducted from the earnable compensation of members, one-fourth of 1 percent shall be credited to the group term life insurance fund in lieu of any other deduction therefor, as provided in Code Section 47-19-10, and the remaining portion shall be credited to the individual accounts of the members in the annuity savings fund. In the event a member is not covered by group term life insurance, the entire amount deducted from the member's earnable compensation shall be credited to the member's individual account in the annuity savings fund.

(d) From and after July 1, 1982, each employer shall pay monthly to the board of trustees, on behalf and to the credit of each member subject to this Code section, employer contributions in an amount equal to the aggregate amount of employer contributions plus employee contributions made by the employer as required by this chapter for and on behalf of persons within the membership of the Employees' Retirement System of Georgia who are not subject to this Code section. With respect to members subject to this Code section, none of these employer contributions shall be considered as accumulated contributions of the member and none shall be eligible for withdrawal by the member upon cessation of state service.

(e) Membership under this Code section shall be optional for any persons who are within the membership of the Employees' Retirement System of Georgia on June 30, 1982. Any such persons may elect in writing on a form to be provided by the board of trustees to become a member subject to this Code section at any time on or after July 1, 1982. This written election shall be final and cannot be later changed or rescinded. Upon such election, a member shall be subject to all the provisions, terms, and conditions of this Code section; provided, however, that the calculation to determine retirement allowances for any person exercising such option shall be made as follows:

(1) The retirement allowance shall be computed fully as if all creditable service of the member were acquired and calculated under the provisions of this Code section;

(2) Then the retirement allowance shall also be computed fully as if all creditable service of the member were acquired and calculated under the provisions of this chapter and the rules and regulations of the board of trustees contained other than in this Code section;

(3) Then, a benefit amount shall be determined based upon a fractional part of each retirement allowance computed in steps (1) and (2), which fractional part shall be computed by using the actual years of creditable service established under either this Code section, for step (1), or the provisions of this chapter contained other than in this Code section, for step (2), which number of years shall be the numerator of the fraction, over the total actual years of creditable service established under

both this Code section and the provisions of this chapter contained other than in this Code section, which number shall be the denominator of the fraction;

(4) The two benefit amounts so determined shall then be added together to produce the actual retirement allowance; and

(5) If a member is otherwise eligible for projected years in service and unless same is made inapplicable by the conditions in subsection (f) of this Code section, projected years of service used in the determination of retirement benefits for death, disability, involuntary separation, or retirement with 34 years of service shall be used in the computation of the retirement allowances under the foregoing steps (1) and (2). However, projected years of service used in such benefits computations shall not be used in determining the fractional part or allocation of the benefit amount described in foregoing step (3).

(f) Members subject to this Code section shall be subject to the following conditions:

(1) The provisions of subsection (d) of Code Section 47-2-120 shall not be applicable to members subject to this Code section;

(2) Except as otherwise provided in Code Sections 47-2-204, 47-2-225, and 47-2-266, and in paragraph (3) of this subsection and except as otherwise expressly provided in this chapter, no service shall constitute creditable service except membership service for which the full rate of employee membership contributions and employer contributions is made pursuant to subsections (c) and (d) of this Code section; and

(3) The provisions of Code Section 47-2-91 shall be applicable to members subject to this Code section; provided, however, that such benefits shall be subject to reduction or repeal by subsequent legislation and shall not be considered an element of any contract of employment.

(g) All members subject to this Code section shall have and be subject to all other rights, privileges, obligations, and duties specified by other provisions of this chapter, and all such other provisions shall be of full force and effect with respect to any matter not specifically provided for in this Code section.

(h) This Code section shall not be construed and is not intended so as to have any effect whatsoever on persons within the membership of the Employees' Retirement System of Georgia on June 30, 1982, who do not elect in writing to become members subject to this Code section.

(i) The provisions of this Code section shall control over conflicting or inconsistent provisions of this chapter or any other law of this state. It is the intention of the General Assembly that this Code section has not been and may not be repealed, superseded, or modified by implication through the

enactment of any other law or through the amendment of any other provision of this chapter or any other existing law, and any modification or repeal of any provision of this Code section may be accomplished only by reference or amendment to or repeal of this specific Code section.

(j) The board of trustees shall cause the actuary for the retirement system to calculate the actuarial cost to the retirement system of any salary increase granted to a member in excess of 5 percent over the 12 months immediately prior to such member's retirement date and shall notify the employing unit of such amount. Such notice shall be sent not later than 60 days following such member's retirement date. The employing unit shall pay such amount, together with the cost of such actuarial calculation, as a supplemental employer contribution to the board of trustees not later than the last day of the month following receipt of such notice. (Ga. L. 1982, p. 1163, § 2; Code 1981, § 47-2-334, enacted by Ga. L. 1982, p. 1163, § 4; Ga. L. 1985, p. 209, § 1; Ga. L. 1986, p. 30, § 1; Ga. L. 1986, p. 1233, § 3; Ga. L. 1990, p. 356, § 2; Ga. L. 1990, p. 532, § 1; Ga. L. 1992, p. 1151, § 2; Ga. L. 1993, p. 86, § 1; Ga. L. 1994, p. 638, § 1; Ga. L. 1996, p. 722, § 2; Ga. L. 1996, p. 730, § 2; Ga. L. 1998, p. 174, § 2; Ga. L. 1998, p. 1104, § 3; Ga. L. 2000, p. 1239, § 2; Ga. L. 2000, p. 1506, § 2; Ga. L. 2002, p. 1288, § 2; Ga. L. 2004, p. 365, § 1; Ga. L. 2007, p. 176, § 2/HB 448; Ga. L. 2009, p. 322, § 4/HB 476; Ga. L. 2010, p. 1207, § 38/SB 436.)

The 2009 amendment, effective July 1, 2009, added subsection (j).

The 2010 amendment, effective July 1, 2010, near the beginning of paragraph (f)(2), deleted "in subsection (j) of Code Section 47-2-96," following "provided" and deleted "47-2-96.1, 47-2-96.2," preceding "47-2-204".

Editor's notes. — Ga. L. 1990, p. 589, amending paragraph (f)(2) of this Code section, was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and became repealed on July 1, 1990. See the state auditor's report at Ga. L. 1990, p. CCCV.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The

intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

JUDICIAL DECISIONS

Equal protection. — Equal protection rights of former employees of county department of family and children services were violated by a provision that significantly reduced retirement benefits to employees who

transferred to state employment after July 1, 1982, as compared to former employees who transferred before that date. *Employees' Ret. Sys. v. Martin*, 272 Ga. 535, 533 S.E.2d 68 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Returning veteran entitled to coverage under “old” plan. — Federal Veterans’ Reemployment Rights Act, 38 U.S.C. § 2021 et seq., permits a veteran to return to state employment under the so-called “old” retirement plan — that is, the plan applicable to members beginning employment prior to July 1, 1982 — even though the veteran’s reemployment date was effective after the enactment of the “new” retirement plan

codified at O.C.G.A. § 47-2-334. 1989 Op. Att’y Gen. No. 89-11.

No military service credit. — Individual whose membership with the Employees’ Retirement System was covered under the provisions of O.C.G.A. § 47-2-334 could not establish credit for time served in the military under the provisions of former O.C.G.A. § 47-2-96 relating to prior service credits. 1987 Op. Att’y Gen. No. 87-33.

ARTICLE 10

GEORGIA STATE EMPLOYEES’ PENSION AND SAVINGS PLAN

Effective date. — This article became effective July 1, 2008.

47-2-350. Short title.

This article shall be known and may be cited as the “Georgia State Employees’ Pension and Savings Plan.” (Code 1981, § 47-2-350, enacted by Ga. L. 2008, p. 1005, § 1/SB 328.)

47-2-351. “Member” defined; membership optional; calculation.

(a) Except where indicated clearly to the contrary by the context, the word “member” as used in this article shall mean any employee who first or again becomes a member of the Employees’ Retirement System of Georgia on or after January 1, 2009. From and after January 1, 2009, every person first or again becoming an employee entitled to a new membership in the Employees’ Retirement System of Georgia shall become a member subject to this article. Any provision of this chapter providing that a class of employees shall be subject to Code Section 47-2-334 shall be deemed to have been amended by this subsection.

(b) Membership under this article shall be optional for any persons who are within the membership of the Employees’ Retirement System of Georgia on December 31, 2008. Any such persons may elect in writing on a form to be provided by the board of trustees to become a member subject to this article at any time on or after January 1, 2009. This written election shall become effective upon the approval of the application by the board of trustees as provided in rules and regulations promulgated by the board of trustees and shall be final and cannot be later changed or rescinded. Upon such election, a member shall be subject to all the provisions, terms, and conditions of this article; provided, however, that the calculation to determine retirement allowances for any person exercising such option shall be made as follows:

(1) The retirement allowance shall be computed fully as if all creditable service of the member were acquired and calculated under the provisions of this article;

(2) Then the retirement allowance shall also be computed fully as if all creditable service of the member were acquired and calculated under the provisions of this chapter contained other than in this article and the rules and regulations of the board of trustees;

(3) Then a benefit amount shall be determined based upon a fractional part of each retirement allowance computed in paragraphs (1) and (2) of this subsection, which fractional part shall be computed by using the actual years of creditable service established under either this article, for paragraph (1) of this subsection, or the provisions of this chapter contained other than in this article, for paragraph (2) of this subsection, which number of years shall be the numerator of the fraction, over the total actual years of creditable service established under both this article and the provisions of this chapter contained other than in this article, which number shall be the denominator of the fraction;

(4) The two benefit amounts so determined shall then be added together to produce the actual retirement allowance; and

(5) Projected years of service shall not be used in the computation of the retirement allowances under this subsection. (Code 1981, § 47-2-351, enacted by Ga. L. 2008, p. 1005, § 1/SB 328.)

47-2-352. Employee and employer contributions.

(a) Every member subject to this article shall contribute employee membership contributions in an amount equal to 1 1/4 percent of earnable compensation which shall be deducted by each employer from the earnable compensation of each member for each and every payroll period and paid monthly to the board of trustees. Such amount shall be credited to the individual accounts of the members in the annuity savings fund.

(b) From and after January 1, 2009, each employer shall pay monthly to the board of trustees, on behalf of each member subject to this article, the aggregate of employer and employee contributions required by this chapter. With respect to members subject to this article, no employer contributions shall be considered as accumulated contributions of the member and none shall be eligible for withdrawal by the member upon cessation of state service. Such amount shall be credited to the pension accumulation fund. (Code 1981, § 47-2-352, enacted by Ga. L. 2008, p. 1005, § 1/SB 328; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted the comma following “of

earnable compensation” in the middle of the first sentence of subsection (a).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or

election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

47-2-353. Service retirement allowance.

Every member subject to this article shall, upon becoming eligible under the provisions of this chapter, be entitled to a service retirement allowance, which shall consist of:

(1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of retirement; and

(2) A monthly pension which, together with the annuity, shall provide a total retirement allowance equal to 1 percent, or such future amount up to 2 percent to be set by the board of trustees in direct relation to any increased appropriations provided by the General Assembly expressly for such increase, of the member's highest average monthly earnable compensation during a period of 24 consecutive calendar months while a member of the retirement system, multiplied by the number of the member's years of creditable service; provided, however, that for members employed on or after July 1, 2009, no salary increase by adjustment in compensation in any manner during the last 12 months, which increase is in excess of 5 percent, shall be included in such computation. (Code 1981, § 47-2-353, enacted by Ga. L. 2008, p. 1005, § 1/SB 328; Ga. L. 2009, p. 322, § 5/HB 476.)

The 2009 amendment, effective July 1, 2009, in paragraph (2), substituted “1 percent” for “1.0 percent” near the beginning and added the proviso at the end.

47-2-354. Conditions; rights, privileges, obligations, and duties.

(a) Members subject to this article shall be subject to the following conditions:

(1) The following provisions shall not be applicable to members subject to this article:

(A) Subsection (d) of Code Section 47-2-120;

- (B) Paragraph (1) of subsection (c) of Code Section 47-2-123;
- (C) Code Section 47-2-124; and
- (D) Code Section 47-2-334;

(2) Except as provided in Chapter 1 of this title and in Code Sections 47-2-99 and 47-2-100, no service shall constitute creditable service except membership service for which the full rate of employee membership contributions and employer contributions is made pursuant to Code Section 47-2-352. The provisions of this paragraph shall not affect the transfer of creditable service between public retirement systems created by this title under such conditions as are now or may hereafter be provided by law;

(3) The provisions of Code Section 47-2-91 shall be applicable to members subject to this article; provided, however, that such benefits shall be subject to reduction or repeal by subsequent legislation and shall not be considered an element of any contract of employment;

(4) Disability benefits shall be calculated as provided in paragraph (2) of subsection (c) of Code Section 47-2-123; provided, however, that the disability benefits of persons entitled to the provisions of Code Section 47-2-221 shall be calculated as provided in such Code section but with the benefit computed on 1 percent of the member's monthly earnable compensation;

(5) Members subject to the provisions of this article shall not be entitled to group term life insurance coverage pursuant to Code Section 47-2-128 or 47-2-129; and

(6) Members subject to Code Section 47-2-244 shall be entitled to the provisions of such Code section.

(b) All members subject to this article shall have and be subject to all other rights, privileges, obligations, and duties specified by other provisions of this chapter, and all such other provisions shall be of full force and effect with respect to any matter not specifically provided for in this article. (Code 1981, § 47-2-354, enacted by Ga. L. 2008, p. 1005, § 1/SB 328; Ga. L. 2010, p. 1207, § 39/SB 436.)

The 2010 amendment, effective July 1, 2010, in subsection (a), added "and" at the end of paragraph (a)(5), substituted a period for "; and" at the end of paragraph (a)(6), and deleted former paragraph (a)(7), which read: "Members subject to the provisions of Code Section 47-2-223 or 47-2-224 shall be entitled to retire as provided in subsection (b) of each such Code section but shall receive a monthly benefit based on 1 percent of his or her highest average com-

penensation rather than the percentage stated in such subsections."

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or

election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-2-355. Disability retirement; periodic medical examination and review.

(a)(1) Subject to the provisions of paragraphs (2) through (5) of this subsection, any member in service who has at least 15 years of creditable service who becomes disabled in service before becoming eligible to receive a service retirement allowance may be retired on a disability allowance by the board of trustees, upon written application to the board of trustees by the member or his or her employer and upon certification by the medical board that he or she is medically or physically incapable of further performance of his or her duties in the position he or she held at the time his or her disability originated, that incapacity is likely to be permanent, and that he or she should be retired; provided, however, that the medical board shall not consider any evidence of such disability which is not submitted within 12 months after the date the member submits his or her first application for a disability retirement. The board of trustees may retire such member not less than 30 days nor more than 90 days after execution and filing of the written application.

(2) A member making application for a disability retirement pursuant to paragraph (1) of this subsection shall at the same time submit a copy of such application together with any supporting documentation accompanying such application to his or her employing agency. The member shall thereafter provide the employing agency with any additional information or documentation which he or she submits to the board of trustees in conjunction with such application.

(3) After receipt of the notice provided for in paragraph (2) of this subsection, the head of the member's agency or his or her designee shall conduct an interview with the member applying for disability retirement; provided, however, that any designee of the head of an agency shall be an official at such agency who is above the level of the applicant's immediate supervisor and who has the authority to make job assignment decisions. The interview shall be held within ten business days after receipt of such notice. Based on the interview and information received by the agency pursuant to paragraph (2) of this subsection, the agency head or his or her designee shall determine if an alternative position is available for the member which meets the following requirements:

(A) The physical requirements for such position are compatible with the member's physical limitations;

(B) The annual compensation and possibility for future advancement for such position shall be the same as or greater than that of the current position of the member;

(C) The duties for such position shall be reasonably compatible with the experience and educational qualifications of the member;

(D) The position shall be one which includes the holder thereof as a member of the retirement system provided for by this chapter; and

(E) The position must be available for acceptance by the member and an offer of the position to the official or member must be made, in writing, by not later than 45 days after the member submitted his or her application for a disability retirement.

An agency making an offer of alternative employment as provided in this paragraph shall so notify the board of trustees within 45 days after the member submitted his or her application for a disability retirement. After receipt of such notice, the board of trustees shall not approve a disability retirement until the procedures of paragraph (4) of this subsection are resolved.

(4) Any member applying for a disability retirement who is offered a position of employment in conformity with the requirements of paragraph (3) of this subsection shall accept the offer or dispute his or her ability to perform the tasks required by the position offered by submitting a written appeal to the agency and to the board of trustees within 30 days after receiving the offer. In the event of an appeal, the agency shall promptly submit to the medical board a detailed description of the requirements of the position offered and the medical board shall determine, based upon all information available to it, whether the member is reasonably capable of performing such tasks. The decision of the medical board shall be final. If the medical board determines that the member is unable to perform the tasks required either by the position held at the time of the application for a disability retirement or the position offered, the member shall be placed on disability retirement immediately.

(5) A member who refuses to accept a position offered or file an appeal in a timely manner or who refuses to accept a position which the medical board has determined on appeal that he or she is capable of performing shall not be eligible to receive a disability retirement under this subsection.

(b) Any member who has at least 15 years of creditable service and who becomes disabled in service before becoming eligible to receive a service retirement allowance shall be eligible to retire forthwith without regard to age and to receive the equivalent of a service retirement allowance calculated upon the number of years of creditable service attained to the date of retirement and based upon his or her highest average monthly compensation during a period of 24 consecutive calendar months while a member of the retirement system. No member who is eligible to receive a service retirement benefit shall be eligible to apply for or receive a disability benefit.

(c)(1) Once each year during the first five years following the retirement of a member on a disability retirement allowance and once in every three-year period thereafter, the board of trustees may require a disability beneficiary who has not yet attained retirement age as specified in subsection (a) of Code Section 47-2-110 to undergo a medical examination, such examination to be made at a place designated by the board, by physicians designated by the medical board. The disability beneficiary may request such an examination. Should any disability beneficiary who has not yet attained retirement age refuse to submit to such medical examination, the pension of such disability beneficiary may be discontinued by the board of trustees until the withdrawal of such refusal; and should the refusal continue for one year, all rights of the disability beneficiary in and to a pension may be revoked by the board of trustees. Should the medical board report and certify to the board of trustees that a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between the disability beneficiary's retirement allowance and the earnable compensation used to calculate the disability retirement allowance at the time of retirement, the board of trustees may reduce the disability beneficiary's pension to an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement. Should the disability beneficiary's earning capacity be later changed, the amount of the pension may be further modified, provided that the modified pension shall not exceed an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement.

(2) The board of trustees may require a disability beneficiary who has not yet attained retirement age as specified in subsection (a) of Code Section 47-2-110 to provide information relevant to any provision of this chapter relating to his or her entitlement to receive a disability retirement. Should any disability beneficiary who has not yet attained retirement age refuse to submit any such information so requested, the board of trustees may suspend the retirement allowance of such disability beneficiary until such information is provided. Should the board of trustees receive information from any source that a disability beneficiary is engaged in an occupation paying more than the difference between the disability beneficiary's retirement allowance and the earnable compensation used to calculate the disability retirement allowance at the time of retirement, the board of trustees may reduce the disability beneficiary's pension to an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allow-

ance at the time of retirement. Should the disability beneficiary's earnings later be changed, the amount of the pension may be further modified, provided that the modified pension shall not exceed an amount which, together with the disability beneficiary's annuity and the amount earnable by the disability beneficiary, equals the earnable compensation used to calculate the disability retirement allowance at the time of retirement. (Code 1981, § 47-2-355, enacted by Ga. L. 2008, p. 1005, § 1/SB 328; Ga. L. 2009, p. 368, § 1/SB 48.)

The 2009 amendment, effective April 30, 2009, part of an Act to revise, modernize, and correct this title, revised language in paragraph (a)(1).

47-2-356. Death allowances and benefits.

(a) For purposes of calculating a survivor's benefit, any member who has at least 15 years of creditable service and who dies in service before becoming eligible for a service retirement shall be deemed to be eligible to retire forthwith without regard to age and to receive the equivalent of a service retirement allowance calculated upon the number of years of creditable service attained to the date of retirement and based upon his or her highest average monthly compensation during a period of 24 consecutive calendar months while a member of the retirement system. Any member who dies in service after becoming eligible for a service retirement shall be deemed to be eligible to retire forthwith to receive a service retirement allowance.

(b) In the application of this subsection to death allowances, computations of retirement allowances shall be made on the same basis as though option two had been in effect. In lieu of the amount of death allowance otherwise payable to the beneficiary under option two, the member, upon written request, may at any time elect a reduced level death allowance of equivalent actuarial value, which allowance is payable to the beneficiary during a period of years certain or to the estate of the beneficiary and during the lifetime of such named beneficiary thereafter. At the election of the member, in case of death of the beneficiary during a term of years certain, the balance of the years certain payments may be paid to the estate of the member; but if such beneficiary predeceases the member, the total amount of the member's contributions to the date of his or her death shall be payable to the member's estate. The method of determining the equivalent actuarial value shall be consistent with the actuarial method of determining the beneficiary's death allowance under option two. (Code 1981, § 47-2-356, enacted by Ga. L. 2008, p. 1005, § 1/SB 328; Ga. L. 2009, p. 322, § 6/HB 476.)

The 2009 amendment, effective July 1, 2009, in subsection (a), substituted "For any" for "Any" at the beginning and inserted "deemed to be" twice.

47-2-357. Withdrawal; employer contributions; vesting; date of election.

(a) As used in this Code section, the term:

(1) “401(k)” means the deferred compensation plan offered by the state for public employees pursuant to Article 3 of Chapter 18 of Title 45 utilizing Section 401(k) of the federal Internal Revenue Code.

(2) “Plan” means the employee savings plan created by this article.

(b) Each member shall, at the time of becoming a member, be automatically enrolled in the plan; provided, however, that the member shall have a period of 90 days from the date of enrollment to withdraw from the plan. Such withdrawal shall be made in writing to the board of trustees in such form as the board prescribes and any employee account balance shall be returned to the member. Thereafter, participation in the plan shall be voluntary. The member may not withdraw from the plan so long as he or she remains eligible to participate in the 401(k) plan offered by the state. Members shall be entitled to an employer contribution as follows:

(1) For each pay period, each member shall contribute 1 percent of his or her compensation into his or her 401(k) account and the employer shall contribute an equal amount into his or her 401(k) account;

(2) After the 1 percent level provided for in paragraph (1) of this subsection has been met, the employer shall contribute an amount equal to 50 percent of such amount as the member chooses to contribute, up to an additional 2 percent of the member’s compensation; and

(3) The member may make such additional contributions as he or she wishes, subject to limitations imposed by federal law.

(4) The board of trustees shall apportion the costs of administering the plan among the employers and members on the basis of the normal costs of administration against any special services requested by any member.

(c) All contributions by participating members are 100 percent vested and shall be maintained in an account and invested based on the participant’s investment allocation choices. All employer contributed amounts credited to a member’s account shall be maintained as a matching contribution subaccount and invested based on the participant’s investment allocation choices. Any and all amounts credited to a member’s matching contribution subaccount, including applicable earnings and investment appreciation or depreciation, shall become vested and nonforfeitable based on the number of employment service years completed and in accordance with the vesting schedule set forth below:

Years of Service	Employer Nonforfeitable Vested Percentage
1	20
2	40
3	60
4	80
5	100

Upon separation from service for greater than 31 days, the portion of such matching contribution subaccount not so vested shall be transferred from the member’s account into a temporary plan forfeiture accumulation account for future disposition as determined by the board of trustees. A break in service less than 32 days shall not affect vesting rights.

(d) Members electing to be governed by the provisions of this article pursuant to subsection (b) of Code Section 47-2-351 shall use their date of election as the beginning date for purposes of calculating their vesting service for the employer contribution as provided in subsection (c) of this Code section used to calculate the vesting requirements of subsection (c) of this Code section, except that service as provided under Code Section 47-2-91 shall not constitute creditable service for this purpose. (Code 1981, § 47-2-357, enacted by Ga. L. 2008, p. 1005, § 1/SB 328.)

47-2-358. Impact on members of Employees’ Retirement System of Georgia on December 31, 2008.

This article shall not be construed and is not intended to have any effect whatsoever on persons within the membership of the Employees’ Retirement System of Georgia on December 31, 2008, who do not elect in writing to become members subject to this article. (Code 1981, § 47-2-358, enacted by Ga. L. 2008, p. 1005, § 1/SB 328.)

47-2-359. Conflicting provisions.

The provisions of this article shall control over conflicting or inconsistent provisions of this chapter or any other law of this state. It is the intention of the General Assembly that this article has not been and may not be repealed, superseded, or modified by implication through the enactment of any other law or through the amendment of any other provision of this chapter or any other existing law, and any modification or repeal of any provision of this article may be accomplished only by reference or amendment to or repeal of this specific article. (Code 1981, § 47-2-359, enacted by Ga. L. 2008, p. 1005, § 1/SB 328.)

47-2-360. Administration.

The board of trustees shall have the responsibility of administering the provisions of this article and shall promulgate such rules and regulations as are necessary to carry out the provisions of this article. (Code 1981, § 47-2-360, enacted by Ga. L. 2008, p. 1005, § 1/SB 328.)

CHAPTER 3

TEACHERS RETIREMENT SYSTEM OF GEORGIA

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47-3-142. Rights and benefits of persons convicted of murder, voluntary manslaughter, or conspiracy to commit either upon a member or retiree.

Cross references. — Expenditure of public funds for retirement benefits and costs authorized, Ga. Const. 1983, Art. III, Sec. X, Para. I. Provision of supplemental pension and retirement allowances by governing boards of public school systems and by Board of Regents, §§ 20-1-2, 20-1-4. Health care plans for public school teachers, § 20-2-880 et seq. Reimbursement of Department of Law by Employees' Retirement System of Georgia, Teachers Retirement System of Georgia, for legal services, § 45-15-37. Authority of municipalities to levy and col-

lect property taxes for purpose of paying pensions and other benefits and costs under a teacher retirement system, § 48-5-351.

Editor's notes. — Ga. L. 1986, p. 1623, proposed an amendment to Ga. Const. 1983, Art. III, Sec. VI, Para. VI adding subparagraph (c), regarding health insurance plans for retired former employees of public school systems. This amendment was approved by a majority of the qualified voters voting at the general election on November 4, 1986.

JUDICIAL DECISIONS

Teachers Retirement System is public body to which O.C.G.A. § 45-6-5 applies. Tate v. Teachers' Retirement Sys., 257 Ga. 365, 359 S.E.2d 649 (1987).

Cited in Young v. State, 132 Ga. App. 790, 209 S.E.2d 96 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Chapter applicable to prior retirees. — Teacher who has reached the age of 60, has taught in the state school system for 35 years, and has retired before Ga. L. 1943, p. 640 (see O.C.G.A. Ch. 3, T. 47) became effective was entitled to the benefits of Ga. L. 1943, p. 640 (see O.C.G.A. Ch. 3, T. 47). 1945-47 Op. Att'y Gen. p. 216.

Upon reading Ga. L. 1974, p. 1139, § 1 (see O.C.G.A. § 47-3-124) within the context of Ga. L. 1943, p. 640 (see O.C.G.A. Ch. 3, T. 47), and upon considering precipitant events leading to the passage of Ga. L. 1943, p. 640 (see O.C.G.A. Ch. 3, T. 47), it becomes evident that Ga. L. 1974, p. 1139, § 1 was designed to include theretofore excluded local fund retirees. 1975 Op. Att'y Gen. No. 75-9.

Teachers in a state evening college may participate in the retirement system. 1945-47 Op. Att'y Gen. p. 217.

Employees of Georgia Teachers' Educa-

tion Association may not participate. — Georgia Teachers' Education Association cannot be construed to be an agency of the state so as to make the association an "employer," as defined by Ga. L. 1943, p. 640 (see O.C.G.A. Ch. 3, T. 47), nor can an employee of the association be construed as a "teacher" within the definition given by Ga. L. 1943, pp. 640 and 641. 1948-49 Op. Att'y Gen. p. 131.

Retirement funds made available from retirement system. — Retirement system is required to make available funds so that a minimum monthly amount is paid to retired members for each year of service up to 40 years; if sufficient funds are not readily available within the retirement system itself, they may be requested from state funds. 1962 Op. Att'y Gen. p. 372.

Trustees may establish different interest rates for actuarial calculations. — Board of trustees may establish different rates of regular interest for use in connection with

different mathematical calculations made by the retirement system. 1977 Op. Att'y Gen. No. 77-74.

Local boards may supplement allowances. — Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47) acknowledges power of local boards to supplement retirement and pension allowances of teachers with other plans, and also acknowledges that tax sheltered annuities might be usable for such a purpose. 1981 Op. Att'y Gen. No. U81-2.

Local school system may establish tax sheltered annuity program. Like a private employer with the power to contract, a local school system may condition employment upon certain requirements so long as the requirements do not violate the Constitution or laws of this state. The teacher's contract may not be unilaterally modified in mid-term to include such a condition; therefore, unless a teacher otherwise agrees to participate in a tax sheltered annuity, the requirement of participation must be included in the employment contract prior to execution and must be agreed upon by both parties before such condition is enforceable. 1981 Op. Att'y Gen. No. U81-2.

Local school system may require tax sheltered annuity program participation. — Local school system may legally require teachers the system employs to participate in a tax sheltered annuity program. 1981 Op. Att'y Gen. No. U81-2.

Retirement benefits to be paid are deferred compensation. — Retirement benefits which would be paid to teacher by Teachers Retirement System are deferred compensation for services previously rendered, while the compensation paid to a teacher by a local board of education for the teacher's current employment is compensation for services being presently rendered; the payments are for separate and different

periods of teaching service covered under different retirement systems. 1980 Op. Att'y Gen. No. 80-22.

Retirement benefits allocated while currently employed not covered. — There is no stated provision in Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47) which would prohibit teacher from receiving retirement benefits under Ga. L. 1943, p. 640 et seq. while currently employed in some other teaching position not under Ga. L. 1943, p. 640 et seq. 1980 Op. Att'y Gen. No. 80-22.

Local school board may contract indirectly to pay superintendent's contributions to Teachers Retirement System for health insurance and for social security; however, since local Acts may affect a local school board's ability to make such contributions, the local board attorney should be consulted in each instance. 1981 Op. Att'y Gen. No. 81-55.

Make greater increase in salary than required to pay superintendent's contribution.

— For a local school board to pay a local school superintendent's contributions to the Teachers Retirement System, for health insurance, and social security, it must increase the superintendent's salary since O.C.G.A. § 47-3-41 provides that such contributions must be deducted from the superintendent's salary. However, the increase of the salary would itself be subject to the required deduction since it would increase the amount of earnable compensation; thus, the amount of increase required to pay the contribution would obviously have to be more than the amount of the contribution itself. Likewise, for a local school board to make such contributions under the Teachers Health Insurance Plan, it must increase the superintendent's salary since the law provides that such contributions must be withheld from the superintendent's salary. 1981 Op. Att'y Gen. No. 81-55.

RESEARCH REFERENCES

ALR. — Reasonableness of classification, as regards beneficiaries, by statute providing for retirement fund or pension for public officers or employees, 163 ALR 870.

Gift to or for employees' pension fund as valid charitable gift or trust, 28 ALR2d 428.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan, 50 ALR3d 880.

Right to unemployment compensation or social security benefits of teacher or other school employee, 33 ALR5th 643.

ARTICLE 1
GENERAL PROVISIONS

OPINIONS OF THE ATTORNEY GENERAL

Extension of Social Security coverage to professional personnel. — Certified professional personnel who are newly employed by the Department of Education and who opt for membership in the Teachers Retirement System (TRS) pursuant to Ga. Laws 1983, p. 1859 are not presently extended Social Se-

curity coverage although such coverage could possibly be established under the referendum procedure set out in O.C.G.A. § 47-18-42. 1983 Op. Att’y Gen. No. 83-49.

Teachers at charter schools shall be members of the Teachers Retirement System. 1999 Op. Att’y Gen. No. U99-4.

47-3-1. Definitions.

As used in this chapter, the term:

(1) “Accumulated contributions” means the sum of all the amounts deducted from the earnable compensation of a member or paid by the member to establish or reestablish credit for service, which amounts are credited to his individual account in the annuity savings fund, together with regular interest on such amounts, as provided in Code Section 47-3-41. Beginning July 1, 1987, “accumulated contributions” shall include the amount of employee contributions paid by employers on behalf of members and credited to the individual accounts of members in the annuity savings fund, together with regular interest thereon.

(2) “Actuarial equivalent” means a benefit of equal value when computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(3) “Annuity” means annual payments for life derived from the accumulated contributions of a member.

(4) “Annuity reserve” means the present value of all payments to be made on account of an annuity or benefit in lieu of an annuity, computed at regular interest upon the basis of the mortality tables adopted by the board of trustees.

(5) “Annuity savings fund” means the fund set forth under Code Section 47-3-41.

(6) “Average final compensation” means the average annual earnable compensation of a teacher during the two consecutive years of membership service producing the highest such average.

(7) “Beneficiary” means any person in receipt of a pension, an annuity, a retirement allowance, or other benefit under this chapter.

(8) “Board of trustees” means the board of trustees as provided for in Code Section 47-3-21 and whose purpose is to administer the retirement system.

(8.1) “Certified professional personnel” means employees of the State Board of Education or the Professional Standards Commission who, by policy of the State Board of Education, are required to possess a valid professional certificate issued by the Professional Standards Commission.

(9) “Commencement date” means January 1, 1945.

(10) “Creditable service” means prior service plus membership service and any other service established under this chapter.

(11) “Earnable compensation” means the full rate of regular compensation payable to a member for his full normal working time and includes compensation paid to a member by an employer from grants or contracts made by outside agencies with the employer. All moneys paid by an employer for a member or by a member into any plan of tax sheltered annuity shall be included as earnable compensation for the purpose of computing any contributions required to be made to the retirement system and also for the purpose of computing any benefits or allowances payable under this chapter. Such term shall include contributions made to a qualified transportation plan, within the meaning of Section 132(f) of the federal Internal Revenue Code, and before tax or salary deferral contributions made under Sections 125, 401(k), 402(g)(3), 457, or 414(h) of the federal Internal Revenue Code to this retirement system or to any other retirement plan maintained by an employer.

(12) “Employer” means the State of Georgia, the county or independent board of education, the State Board of Education, the Board of Regents of the University System of Georgia, or any other agency of and within this state by which a teacher is paid. Notwithstanding any provisions in prior or future Acts to the contrary, the county and regional library boards of trustees shall be deemed to be the employer of the county or regional librarians, whose salaries are paid in full or in part from state funds.

(13) “Expense fund” means the fund set forth in Code Section 47-3-47.

(14) “Local retirement fund” means any teachers’ retirement fund or other arrangement for the payment of retirement benefits to teachers, but not including the retirement system created under this chapter, which fund was maintained during the calendar year 1943 and is financed wholly or in part by contributions made by an employer.

(15) “Member” means any teacher included in the membership of the retirement system.

(16) “Membership service” means service as a teacher rendered while a member of the retirement system for which credit is allowable.

(17) “Pension” means periodic payments for life, derived from contributions of the state or other employer.

(18) "Pension accumulation fund" means the fund set forth under Code Section 47-3-43.

(19) "Pension reserve" means the present value of all payments to be made on account of a pension, or benefit in lieu of a pension, computed at regular interest upon the basis of the mortality tables last adopted by the board of trustees.

(19.1) "Plan year" means the 12 month period beginning on July 1 of each year.

(20) "Prior service" means service rendered prior to January 1, 1945, for which credit is allowable under Code Sections 47-3-83 and 47-3-86.

(21) "Public school" means any day school which is conducted within this state and which is under the authority and supervision of a duly elected county or independent board of education.

(22) "Regular interest" means interest compounded annually at such a rate as shall be determined by the board of trustees in accordance with this chapter.

(23) "Retirement" means withdrawal from service with a retirement allowance granted under this chapter.

(24) "Retirement allowance" means the sum of the annuity and the pension, or any optional benefit payable in lieu thereof, under Code Section 47-3-121. All retirement allowances shall be payable in equal monthly installments, provided that the board of trustees may pay a lump sum of equivalent actuarial value in lieu of a retirement allowance of less than \$10.00 per month.

(25) "Retirement system" means the Teachers Retirement System of Georgia established under Code Section 47-3-20.

(25.1) "Salary" shall have the same meaning as earnable compensation.

(26) "Service" means service rendered as a teacher and paid for by this state or other employer.

(27) "Service credit" means creditable service, as defined in this Code section.

(28) "Teacher" means:

(A) Any of the following persons employed not less than half time by a public school:

- (i) Persons who supervise the public schools;
- (ii) Classroom teachers; and
- (iii) Persons employed in a clerical capacity;

(B) Public school nurses who are employed on a regular basis as much as one-half time or more. The employer's contributions for such public school nurses on all salary amounts which are not paid from state funds shall be paid from local funds;

(C) School librarians;

(D) Administrative officials who supervise teachers;

(E) Full-time public school lunchroom managers or supervisors, full-time public school maintenance managers or supervisors, full-time public school transportation managers or supervisors, and full-time public school warehouse managers or supervisors, upon electing to participate in the retirement system pursuant to Code Section 47-3-63;

(F) Any new certified professional personnel employed for the first time by the State Board of Education or by the State Department of Education on and after July 1, 1983, unless such personnel elect membership in the Employees' Retirement System of Georgia pursuant to subsection (h) of Code Section 47-3-60, and any employee of the State Board of Education or the State Board of Vocational Education employed in a teaching, supervisory, or clerical capacity;

(F.1) Certified professional personnel who are in the unclassified service of the State Personnel Administration and who are employed by the State Board of Education or by the State Department of Education and who become members of this retirement system pursuant to the authority of subsection (i) of Code Section 47-3-60;

(F.2) Newly hired professional personnel employed for the first time by the Technical College System of Georgia on and after July 1, 1985, and all full-time nonprofessional personnel employed for the first time after July 1, 1987, by postsecondary vocational-technical schools governed by the Technical College System of Georgia if otherwise eligible under laws, rules, and regulations, unless such personnel elect membership in the Employees' Retirement System of Georgia pursuant to subsection (j) of Code Section 47-3-60;

(F.3) All full-time employees of a postsecondary vocational-technical school formerly operated by a local board of education or area postsecondary vocational education board as of July 1, 1987, or the date on which the Technical College System of Georgia assumes governance of the postsecondary vocational-technical school if otherwise eligible under laws, rules, and regulations, unless such personnel elect membership in the Employees' Retirement System of Georgia pursuant to subsection (j) of Code Section 47-3-60;

(F.4) Personnel employed by the State Board of Education or by the State Department of Education who are authorized to elect and elect to

become or remain members of the retirement system pursuant to the applicable provisions of Code Section 47-3-60;

(G) Any bona fide teacher, supervisor of teachers, or clerical employee in any school operated by the Department of Education;

(H) Teacher aides and paraprofessional personnel and members of the staff of any regional educational service agency created pursuant to Code Sections 20-2-270 through 20-2-274;

(I) Registrars of each unit of the University System of Georgia;

(J) The secretary and treasurer of the Board of Regents of the University System of Georgia;

(K) Teachers, supervisors of teachers, and clerical workers who are employed and paid by the Board of Regents of the University System of Georgia;

(L) All personnel of the Cooperative Extension Service of the University of Georgia;

(M) Any other person employed not less than on a half-time basis and paid by the Board of Regents of the University System of Georgia, with the exception of such maintenance and custodial employees employed prior to July 1, 1978, who elected to forgo membership, provided that the board of trustees shall determine whether any particular employee is a maintenance or custodial employee;

(N) Any full-time employee of the Georgia Association of Educators, Georgia High School Association, or Georgia School Boards Association, provided that such association, as appropriate, and the employee request that the board of trustees permit them to pay the employer and employee contributions, respectively. The state shall make no contributions on account of such employee;

(O) Librarians and clerical personnel employed by regional and county libraries. Any of such librarians and clerical personnel who were members of a local retirement system on January 1, 1977, and who elected to remain members of such local retirement system shall not be required to become members of this retirement system, or if they were members of this retirement system on that date, they may withdraw from such membership. This election must have been made, in writing, to the board of trustees by not later than January 1, 1978. Any of such librarians and clerical personnel failing to so notify the board of trustees by that date shall be members of this retirement system. The employer contributions for such librarians and clerical personnel who are or who become members of this retirement system shall be paid from local funds on all salary amounts of such librarians and clerical personnel which are not paid from state funds. Prior service of such

librarians and other service for which such librarians have contributed to the Teachers Retirement System of Georgia is ratified, subject to the same laws and the same rules and regulations applicable to other members of this retirement system;

(P) The full-time executive secretary of the Georgia Vocational Association. Such association shall pay the required employer contribution for membership service. The executive secretary shall be entitled to receive credit for prior teaching service by paying the employee and employer contributions that would have been paid, plus interest at the rate of 8 percent per annum; and

(Q) Attendance officers employed not less than half time for service rendered after June 30, 1992. As used in this subparagraph, “attendance officer” means an attendance officer employed in lieu of a visiting teacher under Subpart 2 of Part 1 of Article 16 of Chapter 2 of Title 20; provided, however, that the provisions of this subparagraph shall not apply to any former member employed as an attendance officer who retired prior to July 1, 1992.

The term “teacher” shall not be deemed to include any emergency or temporary employee. The term “teacher” shall not include an individual classified by an employer as an independent contractor or a leased employee within the meaning of Section 414(n) of the federal Internal Revenue Code, even if such individual is later reclassified by the Internal Revenue Service as a common law employee. The board of trustees shall determine in doubtful cases whether any person is included within the definition set forth in this paragraph. Notwithstanding the provisions of subparagraphs (N) and (P) of this paragraph, no person becoming an employee of the Georgia Association of Educators, the Georgia High School Association, or the Georgia School Boards Association or becoming the executive secretary of the Georgia Vocational Association after June 30, 1984, shall be a “teacher” within the meaning of this paragraph or shall be eligible for membership in the retirement system provided for by this chapter unless the person holding any such position is also a “teacher” within the meaning of a subparagraph of this paragraph other than subparagraph (N) or (P) of this paragraph. Except as otherwise provided by Code Section 47-3-84.2, subparagraphs (N) and (P) of this paragraph shall remain effective after June 30, 1984, only for the purpose of allowing any person who was a member of the retirement system on June 30, 1984, because the person held a position specified by subparagraph (N) or (P) of this paragraph to continue such membership as long as the person continues to hold such position. (Ga. L. 1943, p. 640, § 1; Ga. L. 1949, p. 1505, § 1; Ga. L. 1950, p. 261, §§ 1, 2; Ga. L. 1953, Nov.-Dec. Sess., p. 470, § 1; Ga. L. 1956, p. 13, § 1; Ga. L. 1957, p. 118, §§ 1, 2; Ga. L. 1959, p. 315, § 1; Ga. L. 1960, p. 935, § 1; Ga. L. 1962, p. 723, § 11; Ga. L. 1965, p. 438, § 1; Ga. L. 1965, p. 652, § 1; Ga. L. 1966,

p. 513, § 1; Ga. L. 1969, p. 672, § 1; Ga. L. 1970, p. 217, § 1; Ga. L. 1971, p. 226, § 1; Ga. L. 1972, p. 176, § 1; Ga. L. 1972, p. 909, §§ 1, 2; Ga. L. 1974, p. 1179, § 1; Ga. L. 1976, p. 577, § 3; Ga. L. 1977, p. 1135, § 1; Ga. L. 1977, p. 1159, § 1; Ga. L. 1981, p. 1894, § 1; Ga. L. 1982, p. 684, § 3; Ga. L. 1982, p. 965, § 1; Ga. L. 1983, p. 3, § 36; Ga. L. 1983, p. 1859, §§ 2, 3; Ga. L. 1984, p. 1314, § 1; Ga. L. 1986, p. 1543, § 2; Ga. L. 1987, p. 575, § 8; Ga. L. 1987, p. 959, § 1; Ga. L. 1988, p. 379, § 1; Ga. L. 1988, p. 1351, § 2; Ga. L. 1988, p. 1742, § 2; Ga. L. 1990, p. 685, § 1; Ga. L. 1991, p. 1546, § 11; Ga. L. 1992, p. 2182, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 1993, p. 316, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2005, p. 535, §§ 9, 10, 11/HB 460; Ga. L. 2008, p. 562, § 1/SB 434; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2010, p. 427, §§ 4, 5/HB 969; Ga. L. 2010, p. 1207, § 40/SB 436.)

The 2008 amendment, effective July 1, 2008, substituted “Technical College System of Georgia” for “Department of Technical and Adult Education” twice in subparagraph (28)(F.2), and once in subparagraph (28)(F.3).

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” in subparagraph (28)(F.1).

The 2010 amendments. — The first 2010 amendment, effective May 24, 2010, added the last sentence in paragraph (11); added paragraph (19.1); and, in the ending undesignated paragraph of paragraph (28), added the second sentence, in the fourth and fifth sentence, substituted “of this paragraph” for “of paragraph (28) of this Code section” four times, added “of this paragraph” at the end of the fourth sentence, and substituted “subparagraph (N) or (P) of this paragraph” for “said subparagraph (N) or (P)” in the fifth sentence. The second 2010 amendment, effective July 1, 2010, substituted “Sections 47-3-83 and 47-3-86” for “Sections 47-3-83, 47-3-86, and 47-3-87” at the end of paragraph (20).

Cross references. — Eligibility of persons to become members of Teachers Retirement System of Georgia even though receiving retirement pay or allowances from or through Board of Regents, § 20-1-3.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

U.S. Code. — The provisions of the Internal Revenue Code, referred to in paragraph (11), is codified throughout 26 U.S.C.

JUDICIAL DECISIONS

Compensation to buy out contract not considered. — Plain meaning of paragraph (11) of O.C.G.A. § 47-3-1 is that in order for the compensation to be considered for purposes of the calculation of benefits, it must be regular compensation earned for full normal working time. This does not include compensation paid to buy out a three-year

contract. *Tate v. Teachers’ Retirement Sys.*, 257 Ga. 365, 359 S.E.2d 649 (1987).

Use of mortality tables in determining actuarial equivalence. — Although under O.C.G.A. § 47-3-23(b), the Board of Trustees of the Teachers Retirement System of Georgia adopted new mortality tables every four years, the retirees’ optional-plan bene-

fits were erroneously calculated using option factors based upon a mortality table and interest rate adopted in 1983; in determining actuarial equivalence between the optional-plan benefits and the maximum-plan benefits as required under O.C.G.A. § 47-3-121(a), O.C.G.A.

§§ 47-3-1(2) and 47-3-23(b) required that the most recent mortality tables be used for such purposes. *Plymel v. Teachers Ret. Sys.*, 281 Ga. 409, 637 S.E.2d 379 (2006).

Cited in *Fulton County Sch. Dist. v. Sanders*, 242 Ga. 298, 248 S.E.2d 670 (1978).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

ANNUITY

AVERAGE FINAL COMPENSATION

EMPLOYER

MEMBER

PRIOR SERVICE

TEACHER

1. IN GENERAL
2. LIBRARIANS
3. COUNTY AGENTS
4. PRIVATE EMPLOYEES
5. OTHER SCHOOL PERSONNEL

Annuity

University system may enter into tax-sheltered annuity plans. — Board of Regents of the University System of Georgia may authorize the units of the university system to enter into tax-sheltered annuity plans for its employees, and such annuities cannot be considered gratuities under the Constitution. 1965-66 Op. Att’y Gen. No. 65-69.

Local boards may supplement allowances. — O.C.G.A. Ch. 3, T. 47 acknowledges power of local boards to supplement retirement and pension allowances of teachers with other plans, and also acknowledges that tax sheltered annuities might be usable for such a purpose. 1981 Op. Att’y Gen. No. U81-2.

Average Final Compensation

Earnable compensation is equivalent to the teacher’s regular employment salary. Fringe benefits and other sources of “income” which are not part of the teacher’s full rate of regular compensation payable for the teacher’s full normal working time are not includable within the calculations based on earnable compensation. 1980 Op. Att’y Gen. No. 80-134.

Workers’ compensation benefits cannot be included as earnable compensation for purpose of computing retirement benefits. 1980

Op. Att’y Gen. No. 80-134.

Accrued terminal annual leave not included within retirement compensation computation. — Accrued terminal annual leave paid a teacher following the teacher’s last day of service should not be included as salary within the teacher’s highest five-year compensation computation for retirement allowance purposes. 1973 Op. Att’y Gen. No. 73-173.

Employer

Any “employer” means any local board of education for purposes of Ga. L. 1947, p. 1155, §§ 1, 2 (see O.C.G.A. § 47-3-42(b)). 1971 Op. Att’y Gen. No. 71-1.

“Employer” of teacher makes contribution to retirement system. — Statute defines an “employer” of a teacher as that agency “by which a teacher is paid”; therefore, when a teacher is paid by the Department of Education, that department should make the contribution to the retirement system; when a teacher is paid by a local board of education, the local board should make the contribution. 1948-49 Op. Att’y Gen. p. 149 (see O.C.G.A. § 47-3-1).

Make greater increase in salary than required to pay superintendent’s contribution. — For a local school board to pay a local school superintendent’s contributions to the

Employer (Cont'd)

Teachers Retirement System for health insurance and social security, the board must increase the superintendent's salary since O.C.G.A. § 47-3-41 provides that such contributions must be deducted from the superintendent's salary. However, the increase of the salary would itself be subject to the required deduction since it would increase the amount of earnable compensation; thus, the amount of increase required to pay the contribution would obviously have to be more than the amount of the contribution itself. Likewise, for a local school board to make such contributions under the Teachers Health Insurance Plan, the board must increase the superintendent's salary since the law provides that such contributions must be withheld from the superintendent's salary. 1981 Op. Att'y Gen. No. 81-55 (see O.C.G.A. § 47-3-1).

Member

Teacher withdrawing contributions from system no longer "member." — Teacher who withdraws the teacher's contributions with interest from the retirement system is no longer a member of the retirement system as the term "member" is employed in this statute. 1976 Op. Att'y Gen. No. 76-19 (see O.C.G.A. § 47-3-1).

Prior Service

Teacher with emergency certificate may receive credit for prior service. — Teacher who holds an emergency certificate and who, for that reason, was denied the right to participate in the retirement system, and has not made contributions thereto, but who has taught for two years, is eligible for membership in the system and may receive credit for prior service. 1945-47 Op. Att'y Gen. p. 215.

Teacher not allowed pension based on local retirement fund years. — If a teacher has 13 years of accrued creditable service under the retirement system acquired before July 1, 1943 (now January 1, 1945), immediately prior to joining a local system, and that teacher applies ten of those years toward a local retirement fund, that retired teacher would have to serve five years of membership service under the retirement system at some time to be eligible for the

normal retirement benefits payable on the three years not applied to the local system; also, if this teacher acquires the necessary five years of membership service in order to qualify for the creditation of prior service as a "regular member" of the retirement system, the teacher would be entitled to a benefit based on what would have been the annuity contributions during the ten transferred years had that teacher actually been paying contributions during that period; this teacher, however, would not be entitled to the pension amounts on these ten years applied to the local fund because those amounts must be paid to the local fund. 1950-51 Op. Att'y Gen. No. 75-113.

If a teacher includes previous service in a system under the retirement system toward retirement under a local retirement fund, and the retirement system pays the pension amounts on that service to the local fund, the teacher cannot be allowed pension benefits from the retirement system based on those same years for which payments are being made to the local fund, as this would clearly amount to a double payment. 1974 Op. Att'y Gen. No. 74-21.

Restriction of benefits means credit for prior service denied. — Court reads restriction of benefits provision to mean that credit for "prior service" is denied rather than credit for service performed prior to the date any such employee becomes a member of the system. 1968 Op. Att'y Gen. No. 68-222.

Employees of Georgia Association of Educators. — Employee of the Georgia Association of Educators (GAE) who is still a member of the Teachers Retirement System can establish credit for prior teaching service, but cannot establish credit for service as a GAE employee rendered prior to a request for membership made pursuant to paragraph (28) of O.C.G.A. § 47-3-1. 1986 Op. Att'y Gen. No. 86-42.

Teacher**1. In General**

"Teacher" not limited to "classroom teacher." — Term "classroom teacher" is used within the definition of "teacher" in the Teachers Retirement Act. It is a recognized term already employed by the Act. If the General Assembly meant to limit the

application of Ga. Laws 1974, pp. 1139-41, to classroom or "blackboard" teachers, surely the term "classroom teachers" would have been utilized. Furthermore, it would seem manifestly difficult to articulate the scope and definition of the term "public school teachers." If the General Assembly intended to limit the application of the 1974 amendment to a sub-class of "teachers," then more of a definition than "public schoolteachers" would have been provided. 1975 Op. Att'y Gen. No. 75-9.

"Public school teacher" equivalent of "teacher." — Term "public school teacher," as used in Ga. L. 1979, p. 1139, § 1 (see O.C.G.A. § 47-3-124), should be interpreted to mean and include the equivalent classes of individuals retiring under local retirement funds as are included within the definition of "teacher" in Ga. L. 1974, p. 1179, § 1 (see O.C.G.A. § 47-3-1). 1975 Op. Att'y Gen. No. 75-9 (rendered prior to 1986 amendment to Code § 47-3-124 which changed "public school teacher" to "locally retired teacher").

Term "public school teacher" should be interpreted to mean and include the equivalent classes of individuals retiring under local retirement funds as are included within the definition of "teacher" in this statute. 1976 Op. Att'y Gen. No. U76-31 (see O.C.G.A. § 47-3-1).

Assignment to university while on active duty with army. — Colonel was not entitled to creditable membership (teaching) service for the period of time from November 1, 1963 through August 31, 1967 during which the colonel was on active duty in the U.S. Army and assigned to the University of Georgia as a Professor of Military Science. 1985 Op. Att'y Gen. No. 85-15.

Health insurance plan covers "teachers." — Health insurance plan for public school teachers would cover anyone defined as "teacher" under Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47). 1976 Op. Att'y Gen. No. 76-34.

2. Librarians

Librarians and clerical personnel required to be members of retirement system. — Regional and county librarians, and clerical personnel employed by such libraries, are required to be members of the retirement system and may not, in lieu of membership

in the retirement system, choose to be members of a local retirement system for such employees. 1975 Op. Att'y Gen. No. 75-46.

Municipal library employees not considered "teachers." — Because of the distinction between city and noncity libraries, the fact that the Atlanta City Charter governs the composition, powers, and duties of the library board, and because Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47) specifies "regional or county" libraries and does not specifically include "municipal" libraries, the Atlanta Public Library is a municipal library and, as such, its employees are not considered "teachers" as defined in Ga. L. 1943, p. 640 et seq., for the purposes of membership in the system. 1978 Op. Att'y Gen. No. 78-14.

3. County Agents

County agent and home demonstration agent "teachers." — Under this statute, the county agent and home demonstration agent would be classified as "teachers." 1945-47 Op. Att'y Gen. p. 59 (see O.C.G.A. § 47-3-1).

Agricultural agent may have retirement benefits paid by tax levy. — County may levy taxes to provide teacher retirement benefits for a county agricultural agent. 1945-47 Op. Att'y Gen. p. 209.

County and state contribute to retirement fund for dual agent. — If the county pays any part of the county agent's salary, even though the agent is assigned to the county by the agricultural (cooperative) extension service of the university, the county agent would be the employee of the university system and of the county, and the university system and the county would both be required to contribute to a reserve fund from which teacher retirement benefits are paid. 1948-49 Op. Att'y Gen. p. 528.

How employee of agricultural and development board included as "teacher." — Agricultural and Industrial Development Board of Georgia is an agency which comes within the definition of an "employer" under this statute, and should any paid employee of the board perform duties which would entitle such employee to be classified as a "teacher" it would be the duty of the board of trustees to determine in doubtful cases whether the employee is a "teacher" as defined in this statute. 1948-49 Op. Att'y

Teacher (Cont'd)

3. County Agents (Cont'd)

Gen. p. 136 (see O.C.G.A. § 47-3-1).

4. Private Employees

Private teachers not entitled to retirement system. — Teachers employed by private or denominational schools are not entitled to participate in retirement system. 1945-47 Op. Att'y Gen. p. 218.

Teachers employed by a school operated as a private corporation, which is not conducted under the supervision of a county or independent board of education, may not participate in the retirement system, although the school accepts all children from an independent school district and receives funds from the school district and from the county. 1945-47 Op. Att'y Gen. p. 218.

Members or employees of the Georgia Tech Athletic Association are not "teachers" entitled to the benefits of Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47). 1945-47 Op. Att'y Gen. p. 213.

5. Other School Personnel

Inclusion of Department of Education employees in Employees' Retirement System.

— Under existing law, current and future employees of the State Department of Education must be included within the membership of the Employees' Retirement System of Georgia. 1983 Op. Att'y Gen. No. 83-2.

Since the employees of the State Department of Education are employed within a state board or department, the mandatory inclusion under the Employees' Retirement System in O.C.G.A. § 47-2-70 completely supplanted and repealed by implication any inclusion of such employees under the definition of "teacher" in paragraph (28) of O.C.G.A. § 47-3-1. 1983 Op. Att'y Gen. No. 83-2.

County school superintendent is entitled to the benefits of Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47). 1945-47 Op. Att'y Gen. p. 152.

Athletic coaches employed by the regents of the university system are not "teachers" as contemplated by the retirement system. 1948-49 Op. Att'y Gen. p. 149.

Teacher's aide or paraprofessional may be eligible for coverage. — If a teacher's aide or paraprofessional meets the requirements set forth by Ga. L. 1969, p. 998 (see O.C.G.A. §§ 47-3-1, 47-4-2 and 47-4-40), then that person is eligible for coverage under the Public School Employees Retirement System. 1971 Op. Att'y Gen. No. 71-189.

RESEARCH REFERENCES

ALR. — What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon, 91 ALR5th 225.

ARTICLE 2

CREATION, ADMINISTRATION, AND MANAGEMENT OF THE ASSETS OF THE RETIREMENT SYSTEM

Administrative rules and regulations. — Administrative Rules, Official Compilation of the Rules and Regulations of the State of

Georgia, Teachers Retirement System of Georgia, Chapter 513-5-1.

47-3-20. Creation and management of the Teachers Retirement System of Georgia; its powers and privileges; name under which business transacted.

A retirement system is established for the purpose of providing retirement allowances and other benefits under this chapter for teachers of this state and is placed under the management of the board of trustees. It shall

have the power and privileges of a corporation, the right to bring and defend actions, to implead and be impleaded, and shall be known as the “Teachers Retirement System of Georgia,” in which name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (Ga. L. 1943, p. 640, § 2; Ga. L. 1982, p. 3, § 47.)

JUDICIAL DECISIONS

Benefits not property of bankruptcy estate. — Chapter 7 debtor’s interest in a Teachers Retirement System of Georgia annuity that the debtor received as a beneficiary was excluded from the bankruptcy estate under 11 U.S.C. § 541(c)(2); the interest was in a trust because the annuity funds were still under the administration of the state pursuant to O.C.G.A. § 47-3-20 et seq., and the trust incorporated a statutory anti-alienation provision under O.C.G.A.

§ 47-3-28(a) enforceable under O.C.G.A. § 53-12-28. *Coleman v. Hainlen* (In re Hainlen), 365 B.R. 288 (Bankr. S.D. Ga. 2007).

Cited in *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975); *Teachers Retirement Sys. v. City of Atlanta*, 249 Ga. 196, 288 S.E.2d 200 (1982); *Kirksey v. Teachers Retirement Sys.*, 250 Ga. 884, 302 S.E.2d 101 (1983).

RESEARCH REFERENCES

C.J.S. — 78 C.J.S., Schools and School Districts, § 481 et seq.

ALR. — Re-employment or reinstatement

of public officer or employee as restoration of original status as regards incidental rights or privileges, 89 ALR 684.

47-3-21. Creation and membership of board of trustees; filling of vacancies; per diem, expenses, and oath of office; quorum; creation, membership, and duties of Teachers Retirement System Nomination Committee.

(a) There is created a board of trustees which shall consist of ten trustees as follows:

(1) The state auditor, ex officio;

(2) One member who shall be an active member of the Teachers Retirement System of Georgia who is a classroom teacher and is not an employee of the Board of Regents of the University System of Georgia. Such member shall be appointed by the Governor for a term of three years with the initial term beginning April 1, 1991. In making the appointment, the Governor may consider, but not be limited to, nominations furnished him by the nominating committee provided for by subsection (g) of this Code section;

(3) The state treasurer, ex officio;

(4) One member who shall be an active member of the Teachers Retirement System of Georgia who is a classroom teacher and not an employee of the Board of Regents of the University System of Georgia. Such member shall be appointed by the Governor for a term of three

years with the initial term beginning July 1, 1984. In making the appointment the Governor may consider, but not be limited to, nominations furnished him by the nominating committee provided for by subsection (g) of this Code section;

(5) One member who shall be an active member of the Teachers Retirement System of Georgia who is a school administrator and not an employee of the Board of Regents of the University System of Georgia. Such member shall be appointed by the Governor for a term of three years with the initial term beginning July 1, 1986. In making the appointment the Governor may consider, but not be limited to, nominations furnished him by the nominating committee provided for by subsection (g) of this Code section. The trustee occupying the "school administrator" position on the board of trustees on July 1, 1984, and a prior appointment by the Governor shall continue to serve in this position from July 1, 1984, until July 1, 1986;

(6) One member who shall be an active member of the Teachers Retirement System of Georgia who is not an employee of the Board of Regents of the University System of Georgia. Such member shall be appointed by the Governor for a term of three years with the initial term beginning July 1, 1985. In making the appointment the Governor may consider, but not be limited to, nominations furnished him by the nominating committee provided for by subsection (g) of this Code section. Prior to July 1, 1984, the trustees holding office under immediately preceding law and prior appointments by the Governor shall elect a person to occupy this position on the board of trustees from July 1, 1984, until July 1, 1985;

(7) One member who shall be an active member of the Teachers Retirement System of Georgia who is an employee of the Board of Regents of the University System of Georgia and who shall be appointed by the board of regents for a term of three years with the initial term beginning July 1, 1985. The trustee occupying the "employee of the board of regents" position on the board of trustees on July 1, 1984, and a prior appointment by the board of regents shall continue to serve in this position from July 1, 1984, until July 1, 1985;

(8) One member to be appointed by the Governor for a term of three years with the initial term beginning July 1, 1984;

(9) One member who has retired under the Teachers Retirement System of Georgia and who shall be elected by the remaining trustees for a term of three years with the initial term beginning July 1, 1985. The trustee occupying the "retired teacher" position on the board of trustees on July 1, 1984, and a prior appointment by the Governor shall continue to serve in this position from July 1, 1984, until July 1, 1985; and

(10) The tenth trustee shall be a citizen of Georgia, not a member of the Teachers Retirement System of Georgia, who shall be experienced in

the investment of moneys and who shall be elected by the remaining trustees for a term of three years with the initial term beginning July 1, 1984.

(b) If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term by the remaining trustees.

(c) The trustees shall each receive the daily expense allowance authorized for members of the General Assembly for each day spent attending meetings of the board of trustees, any committee meetings called pursuant to authorization of the board of trustees, and for time spent in necessary travel. In addition to such per diem, the trustees shall be reimbursed for all actual traveling and other expenses necessarily incurred through service on the board of trustees. State officials serving ex officio shall receive no per diem but shall only be entitled to reimbursement of actual expenses.

(d) Each trustee shall, within ten days after his appointment or election, take an oath of office that so far as it devolves upon him he will diligently and honestly administer the affairs of the board of trustees and that he will not knowingly violate or willingly permit to be violated any laws applicable to the retirement system. Such oath shall be subscribed to by the trustee making it, certified by the officer before whom it is taken, and shall be filed immediately in the office of the Secretary of State.

(e) Six trustees at any meeting of the board of trustees shall constitute a quorum to transact business. Each trustee shall be entitled to one vote. Five votes shall be necessary for a decision by the board of trustees.

(f) With respect to the selection of all trustees under the provisions of subsection (a) of this Code section, the Governor, the board of trustees, the Board of Regents of the University System of Georgia, and the nominating committee provided for by subsection (g) of this Code section shall give due consideration to minority groups included within the teaching profession.

(g)(1) The Teachers Retirement System Nominating Committee is created and such committee shall be composed of five members. Two members shall be from the Georgia Association of Educators, each of whom shall be selected from different geographical areas of the state; one member shall be from the Georgia Federation of Teachers; one member shall be from the Professional Association of Georgia Educators; and one member shall be from the Georgia Association of Educational Leaders. The members of each respective organization shall elect its respective member or members of the nominating committee by May 1, 1984. The members of the nominating committee shall serve for terms of three years and their successors shall be selected in the same manner as the original members. Any vacancy shall be filled for the unexpired term by the members of the educational organization which elected the member wherein the vacancy exists.

(2) The nominating committee shall submit to the Governor a list of three names for each person to be appointed by the Governor pursuant

to paragraphs (4), (5), and (6) of subsection (a) of this Code section as a member of the board. In making appointments pursuant to paragraphs (4), (5), and (6) of subsection (a) of this Code section, the Governor may consider the names submitted by the nominating committee, but it is specifically provided that the appointments shall be at the sole discretion of the Governor, and the Governor shall not be required to choose any appointee from names submitted by the nominating committee.

(3) The members of the nominating committee shall serve without compensation. Such members may be reimbursed for travel or other expenses incurred in attending meetings of the nominating committee from the funds of their respective employers or educational organizations but not from the funds of the Teachers Retirement System of Georgia. (Ga. L. 1943, p. 640, § 6; Ga. L. 1964, p. 219, § 1; Ga. L. 1965, p. 112, § 1; Ga. L. 1971, p. 226, § 2; Ga. L. 1971, p. 413, § 1; Ga. L. 1975, p. 495, §§ 1, 2; Ga. L. 1975, p. 1637, §§ 3, 4; Ga. L. 1978, p. 1441, § 1; Ga. L. 1984, p. 1155, §§ 1, 2; Ga. L. 1985, p. 209, § 1; Ga. L. 1987, p. 146, § 1; Ga. L. 1989, p. 52, § 1; Ga. L. 1991, p. 274, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 1993, p. 1690, § 3; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in paragraph (a)(3).

Editor’s notes. — Ga. L. 1984, p. 1155, § 3, not codified by the General Assembly, provides: “For the purpose of the creation of the nominating committee provided for in quoted subsection (g) of Section 2 of this Act [which amended subsection (e) of this Code section and added subsections (f) and (g)], for the purpose of the submission of names to the Governor by said nominating committee, and for the purpose of making

appointments to the Board of Trustees of the Teachers Retirement System of Georgia in conformity with the requirements of quoted revised subsection (a) of Section 1 of this Act [which amended subsection (a) of this Code section], this Act shall become effective upon its approval by the Governor or upon its otherwise becoming law. For the purposes of the composition of the Board of Trustees of the Teachers Retirement System of Georgia in conformity with the requirements of quoted revised subsection (a) of Section 1 of this Act, this Act shall become effective on July 1, 1984.”

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality of selection method. — Method of selection of five of the ten members of the Board of Trustees of the Teachers Retirement System of Georgia is of doubtful constitutional validity, which doubt can be

resolved by resignation of members involved, resulting in vacancies which should be filled through action by the Governor. 1982 Op. Att’y Gen. No. 82-36 (rendered prior to 1984 amendment to this section.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. 63C Am. Jur. 2d, Public Officers and Employees, §§ 91, 108, 124, 288.

C.J.S. — 67 C.J.S., Officers, §§ 52, 59 et seq., 86 et seq., 100 et seq., 104, 107, 277 et seq., 313. 78 C.J.S., Schools and School Districts, § 485.

47-3-22. Election of chairman and executive director of the board of trustees; payments by executive director of retirement system funds; surety bond required of executive director.

(a) The board of trustees shall elect from its membership a chairman and shall elect an executive director, who shall not be one of its members.

(b) The executive director shall be subject to the rules and regulations of the board of trustees and shall be the treasurer of the assets of the retirement system. All payments of the funds of the retirement system shall be made by the executive director and only upon vouchers signed by him and countersigned by one other person designated by the board of trustees. The executive director shall furnish the board of trustees with a surety bond issued by a company authorized to do business in this state and in such an amount as shall be required by the board of trustees. The premium on such bond shall be paid from the expense fund provided for in Code Section 47-3-47. (Ga. L. 1943, p. 640, §§ 6, 7; Ga. L. 1990, p. 536, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Executive secretary-treasurer may perform investment duties. — Executive secretary-treasurer of the retirement system is a proper and qualified member of the investment committee of the retirement sys-

tem and may be delegated the authority, following a proper investment decision, to perform mechanical or ministerial duties effectuating the investment decision or transaction. 1975 Op. Att'y Gen. No. 75-66.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. 63C Am. Jur. 2d, Public Officers and Employees, §§ 91, 130, 247, 276.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 47, 61, 236, 259 et seq., 266, 270 et seq., 313. 78 C.J.S., Schools and School Districts, § 485.

47-3-23. Designation and duties of an actuary for the board of trustees; periodic actuarial investigation and recommendations; calculation tables and regular interest rate; annual valuation.

(a) The board of trustees shall designate an actuary who shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by this chapter and who shall perform such duties as are required in connection therewith.

(b) From time to time, but at least once in every five-year period, the actuary shall make an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system and recommend for adoption by the board of trustees, mortality, service, and other tables needed in the operation of the retirement system. Taking into account the results of such investigations, the board of trustees from time to time shall adopt for the retirement system

such mortality, service, and other tables as it shall deem necessary for use in all calculations required in connection with this retirement system. The board of trustees shall also determine from time to time the rates of regular interest for use in all calculations required in connection with the retirement system, limited to a minimum of 2 percent.

(c) On the basis of regular interest and the tables last adopted by the board of trustees, the actuary shall make annual valuations of the contingent assets and liabilities of the retirement system. (Ga. L. 1943, p. 640, § 6; Ga. L. 1971, p. 413, § 1; Ga. L. 1975, p. 1637, § 4; Ga. L. 1978, p. 1441, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1982, p. 978, §§ 1, 2; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “adviser” for “advisor” in the middle of subsection (a).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

OPINIONS OF THE ATTORNEY GENERAL

Trustees may establish different interest rates for actuarial calculations. — Reading Ga. L. 1975, p. 1637, § 4 (see O.C.G.A. § 47-3-23) in context with Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47), the

board of trustees may establish different rates of regular interest for use in connection with different mathematical calculations made by the retirement system. 1977 Op. Att’y Gen. No. 77-74.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244 et seq.

C.J.S. — 67 C.J.S., Officers and Public

Employees, § 313. 78 C.J.S., Schools and School Districts, § 485.

JUDICIAL DECISIONS

Use of mortality tables in determining actuarial equivalence. — Although under O.C.G.A. § 47-3-23(b), the Board of Trustees of the Teachers Retirement System of Georgia adopted new mortality tables every four years, the retirees’ optional-plan benefits were erroneously calculated using option factors based upon a mortality table and interest rate adopted in 1983; in determin-

ing actuarial equivalence between the optional-plan benefits and the maximum-plan benefits as required under O.C.G.A. § 47-3-121(a), O.C.G.A. §§ 47-3-1(2) and 47-3-23(b) required that the most recent mortality tables be used for such purposes. *Plymel v. Teachers Ret. Sys.*, 281 Ga. 409, 637 S.E.2d 379 (2006).

47-3-24. Legal adviser of the board of trustees.

The Attorney General shall be the legal adviser of the board of trustees. (Ga. L. 1943, p. 640, § 6; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “adviser” for “advisor” in this Code section.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 10.

C.J.S. — 7A C.J.S., Attorney General, § 26 et seq.

47-3-25. Medical board; designation; duties regarding medical examinations required under this chapter.

The board of trustees shall designate a medical board of three physicians who are not eligible to participate in the retirement system. Other physicians may be employed to report on special cases, as necessary. The medical board shall arrange for and pass upon all medical examinations required under this chapter and shall report in writing to the board of trustees its conclusions and recommendations upon all the matters referred to it. (Ga. L. 1943, p. 640, § 6; Ga. L. 1982, p. 3, § 47.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244 et seq.

C.J.S. — 78 C.J.S., Schools and School Districts, § 485.

C.J.S. — 67 C.J.S., Officers and Public

47-3-26. Powers and duties of the board of trustees generally.

(a) The administration and responsibility for the proper operation of the retirement system and for placing this chapter into effect are vested in the board of trustees, which shall be organized immediately after a majority of the trustees provided for in Code Section 47-3-21 have qualified and taken the oath of office.

(b) Subject to the limitations of this chapter, the board of trustees may from time to time establish rules and regulations for the administration of the funds created by this chapter and for the transaction of its business.

(c) The board of trustees shall engage such actuarial and other services as shall be required to transact the business of the retirement system.

(d) The compensation of all persons engaged by the board of trustees under subsection (c) of this Code section and all other expenses of the board necessary for the operation of the system shall be paid at such rates and in such amounts as the board of trustees shall approve.

(e) The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuations of the various funds of the retirement system and for checking the experience of the retirement system.

(f) The board of trustees shall keep a record of all of its proceedings, which shall be open to public inspection.

(g) The board of trustees shall publish an annual report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of the retirement system, and the last balance sheet showing the financial condition of the retirement system, by means of an actuarial valuation of the contingent assets and liabilities of the retirement system. (Ga. L. 1943, p. 640, § 6.)

JUDICIAL DECISIONS

Cited in Teachers Retirement Sys. v. City of Atlanta, 249 Ga. 196, 288 S.E.2d 200 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Formulate rules serving best interests of fund and beneficiaries. — It is the responsibility and duty of the board of trustees to formulate such rules and regulations consistent with Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47), as will, in their judgment, serve the best interest of the retirement fund and the individual beneficiaries thereof. 1948-49 Op. Att'y Gen. p. 129.

Cannot diminish or alter vested benefits. — Trustees are not allowed by rules or regulations to diminish or alter vested benefits. 1948-49 Op. Att'y Gen. p. 529.

Executive secretary-treasurer may perform investment duties. — Executive secretary-treasurer of the retirement system is a proper and qualified member of the

investment committee of the retirement system and may be delegated the authority, following a proper investment decision, to perform mechanical or ministerial duties effectuating the investment decision or transaction. 1975 Op. Att'y Gen. No. 75-66.

Judges legal custodians of retirement benefits owed insane persons. — Judges of the probate courts of the several counties are constituted the legal custodians and distributors of all moneys due and owing to any insane person who has no legal and qualified guardian, and they are authorized to receive and collect all such moneys arising from insurance policies, benefit societies, legacies, inheritances, or any other source, provided the amount due from all sources shall not exceed the amount of \$500.00 (now

\$2,500.00); the benefits to which a beneficiary is entitled to under a teachers' retirement fund would fall within the provisions of Acts 1918, p. 198; 1927, p. 256. 1948-49 Op. Att'y Gen. p. 129.

State board withholds allocations from delinquent local unit. — It was the intention of the General Assembly that an action for the recovery of sums due to the board of trustees shall be initiated by a decision of the

board and that, upon the receipt of the notice of such a decision, the State Board of Education is obliged to withhold all allocated appropriations from a delinquent local unit until the state board receives from the board of trustees the notice of its decision that the local unit has discharged its obligations to the board of trustees in the manner provided by law. 1971 Op. Att'y Gen. No. 71-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 77.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 78 C.J.S., Schools and School Districts, § 485. 81A C.J.S., States, § 388 et seq.

47-3-27. Investment powers; power to maintain cash on deposit for payments under the retirement system; personal interests in investments prohibited.

(a) The members of the board of trustees shall be the trustees of the retirement system and shall have full power to invest and reinvest its assets, subject to all the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the "Public Retirement Systems Investment Authority Law." Subject to like restrictions, the board of trustees shall have the power to hold, transfer, and dispose of any investments in which retirement system assets are invested, including proceeds of investments. The board of trustees is authorized to employ agents, including banks and trust companies, to act as investment advisers and make investments if the board of trustees so authorizes.

(b) For the purpose of meeting disbursements for pensions, annuities, and other payments, the board of trustees may keep available cash on deposit in one or more banks or trust companies organized under the laws of this state or of the United States, provided that the sum on deposit in any one bank or trust company shall not exceed 25 percent of the paid-up capital and surplus of each bank or trust company. Each bank or trust company shall give a depository bond in an amount sufficient to cover the deposits or shall place in trust a sufficient amount of federal or state securities to cover the deposits.

(c) Except as otherwise provided in this chapter no trustee or employee of the board of trustees shall have any personal interest in the gains or profits from any investment made by the board of trustees or use the assets of the retirement system in any manner, directly or indirectly, for himself or as an agent, except to make such payments as are authorized by the board of trustees in accordance with this chapter. (Ga. L. 1943, p. 640, § 7; Ga. L.

1963, p. 433, § 1; Ga. L. 1969, p. 391, § 2; Ga. L. 1995, p. 651, § 2; Ga. L. 2000, p. 2, § 5; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “paid-up capital” for “paid up capital” in the first sentence of subsection (b).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to

provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

JUDICIAL DECISIONS

Cited in *Teachers Retirement Sys. v. City of Atlanta*, 249 Ga. 196, 288 S.E.2d 200 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Executive secretary-treasurer may perform investment duties. — Executive secretary-treasurer of the retirement system is a proper and qualified member of the investment committee of the retirement system and may be delegated the authority, following a proper investment decision, to perform mechanical or ministerial duties effectuating the investment decision or transaction. 1975 Op. Att’y Gen. No. 75-66.

Retirement system may make secured loans provided the prior approval of the Insurance Commissioner is obtained. 1954-56 Op. Att’y Gen. p. 608.

Investment of retirement funds in federal

Housing Authority mortgage loans at 100 percent of the value of the property is legal, provided the Insurance Commissioner approves such loans. 1954-56 Op. Att’y Gen. p. 609.

Upon the assent of the Insurance Commissioner, the retirement system may legally make loans secured by mortgages on real estate up to 100 percent of the value of the property. 1954-56 Op. Att’y Gen. p. 610.

Retirement system may invest in secured and unsecured notes subject to the same restrictions and safeguards that are applicable to investments of domestic life insurance companies. 1962 Op. Att’y Gen. p. 370.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1169 et seq., 1244. 63A Am. Jur. 2d, Public Officers and Employees, § 335 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 244 et seq., 313. 78 C.J.S., Schools and School Districts, §§ 346, 352. 81A C.J.S., States, § 374 et seq.

47-3-28. Rights exempted from levy and sale, garnishment, and other process; assignability; exemptions for other retirement systems; assets and investments and their transfer or sale exempted.

(a) The right to a pension, annuity, retirement allowance, return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit, or any other right accrued or accruing to any person under this chapter and the moneys in the various accounts created by this chapter are exempt from any state, county, or municipal tax, except as provided in Code Section 48-7-27; exempt from levy and sale, garnishment, attachment, or any other process whatsoever; and shall not be assignable except as otherwise specifically provided in this chapter. The exemptions under this Code section shall extend to benefits accrued or accruing to any member of a local retirement system, whether such benefits are attributable to amounts paid by the retirement system to such local retirement system for the account and benefit of the member, or otherwise.

(b) A resident of this state who receives a pension, annuity, or retirement allowance from a teachers' retirement system of another state or political subdivision shall be entitled to the same exemptions with respect to such benefits as are set forth in subsection (a) of this Code section, provided that the law of such other state or political subdivision allows substantially the same treatment to a person residing there with respect to a pension, annuity, or retirement allowance received from the Teachers Retirement System of Georgia.

(c) The tangible, intangible, real, personal, or mixed property investments or assets of this retirement system of whatever kind or nature and the earnings or proceeds derived from such investments or assets are declared to be public property and exempt from taxation by the state, or by any county, municipality, authority, or political subdivision of this state and exempt from levy and sale, garnishment, attachment, or any other process whatsoever.

(d) The transfer or sale of tangible, real, personal, or mixed property investments or assets to or from this retirement system and the instruments of such transfer or sale shall be exempt from any tax on such sales, transfers, or instruments levied by the state or by any county, authority, municipality, or political subdivision of this state. (Ga. L. 1943, p. 640, § 10; Ga. L. 1968, p. 543, § 2; Ga. L. 1973, p. 896, § 1; Ga. L. 1976, p. 647, § 1; Ga. L. 2000, p. 1449, § 3.)

JUDICIAL DECISIONS

Retirement benefits assigned not subject to widow's claim. — Retirement benefits of a decedent under the Teachers Retirement System are not subject to his widow's year's-support claim when the decedent has made a valid designation of a different beneficiary. *Kirksey v. Teachers Retirement Sys.*, 250 Ga. 884, 302 S.E.2d 101 (1983).

Atlanta hotel-motel excise tax is a tax on the person occupying a guest room, not on the “transfer” of the room, and O.C.G.A. §§ 47-2-332 and 47-3-28) give no tax exemption to “persons occupying a guest room.” *Teachers Retirement Sys. v. City of Atlanta*, 249 Ga. 196, 288 S.E.2d 200 (1982).

Property held by the retirement systems is not held for the benefit of private citizens; it is held for the benefit of public employees for whom the General Assembly has created retirement systems. This includes properties which produce income, as cabins in state parks and the hotel facilities at the continuing education center at the University of Georgia. *Teachers Retirement Sys. v. City of Atlanta*, 249 Ga. 196, 288 S.E.2d 200 (1982).

Benefits not property of bankruptcy estate. — Chapter 7 debtor’s interest in a Teachers Retirement System of Georgia annuity that the debtor received as a beneficiary was excluded from the bankruptcy estate under 11 U.S.C. § 541(c)(2); the in-

terest was in a trust because the annuity funds were still under the administration of the state pursuant to O.C.G.A. § 47-3-20 et seq., and the trust incorporated a statutory anti-alienation provision under O.C.G.A. § 47-3-28(a) enforceable under O.C.G.A. § 53-12-28. *Coleman v. Hainlen* (In re Hainlen), 365 B.R. 288 (Bankr. S.D. Ga. 2007).

Retirement benefits subject to state income tax. — Subjecting retirement benefits of retired teachers to state income taxation did not violate the constitutional prohibition against state laws impairing the obligation of contracts since the teachers had no vested right to an irrevocable exemption which was barred under Ga. Const. 1983, Art. VII, Sec. I, Para. I. *Parrish v. Employees’ Retirement Sys.*, 260 Ga. 613, 398 S.E.2d 353 (1990), cert. denied, 500 U.S. 353, 111 S. Ct. 2016, 114 L. Ed. 2d 103 (1991).

Cited in *Shell v. Teachers Ret. Sys. of Ga.*, 291 Ga. App. 571, 662 S.E.2d 345 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Teacher retirement allowances exempt from income tax. — Word “pension” denotes a gratuity, or a payment in recognition of, but not in payment for, services rendered, and a retirement is not a “pension,” but is rather payment for services per-

formed, and, hence, it is subject to the income tax unless specifically exempt, as are the funds paid as retirement allowances to teachers exempt under this statute. 1952-53 Op. Att’y Gen. p. 213 (see O.C.G.A. § 47-3-28).

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, § 167 et seq. 31 Am. Jur. 2d, Exemptions, § 94 et seq.

C.J.S. — 33 C.J.S., Executions, § 42. 38 C.J.S., Garnishment, §§ 27 et seq., 92 et seq., 137.

ALR. — Retirement or pension proceeds

or annuity payments under group insurance as subject to attachment or garnishment, 28 ALR2d 1213.

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711.

47-3-29. Deduction of membership dues of nonprofit organizations from benefit payments.

(a) The board of trustees is authorized, but not required, to deduct from benefit payments the membership dues of any nonprofit organization domiciled in Georgia which requests such deductions, provided that at least 30 percent of the retired members of this retirement system belong to such organization and members of the organization request that such deduction be made as provided in subsection (b) of this Code section.

(b) Any retired member desiring the deduction provided for in subsection (a) of this Code section must so notify the board of trustees in writing in the manner specified by the board of trustees. Once begun, any such deduction may be canceled only by a request to the board of trustees in writing in a manner specified by the board of trustees.

(c) Any organization for which membership dues deductions are made as provided in this Code section shall reimburse this retirement system for the actual cost of making such deductions.

(d) Any organization requesting the deductions provided in subsection (a) of this Code section shall reimburse this retirement system for the actual cost of determining if such organization is eligible as provided in subsection (a) of this Code section.

(e) In the event a dispute arises regarding deductions provided in subsection (a) of this Code section, this retirement system shall not be liable to any party in any manner, and the matter shall be settled between the retired member and the organization involved. (Code 1981, § 47-3-29, enacted by Ga. L. 1993, p. 432, § 1; Ga. L. 1994, p. 92, § 1.)

ARTICLE 3

EMPLOYEE AND EMPLOYER CONTRIBUTIONS; CREATION OF
FUNDS FOR CONTRIBUTIONS, BENEFITS,
AND ADMINISTRATIVE EXPENSES

Administrative rules and regulations. — Georgia, Teachers Retirement System of Administrative Rules, Official Compilation of Georgia, Chapter 513-5-1. of the Rules and Regulations of the State of

OPINIONS OF THE ATTORNEY GENERAL

“Employer” of teacher makes contribution to retirement system. — Ga. L. 1943, p. 640, § 1 (see O.C.G.A. § 47-3-1) defines an “employer” of a teacher as that agency “by which a teacher is paid”; therefore, when a teacher is paid by the Department of Education, that department should make the contribution to the retirement system; when a teacher is paid by a local board of education, the local board should make the contribution. 1948-49 Op. Att’y Gen. p. 149.

Pension from retirement system not based

on local retirement fund. — If a teacher includes previous service in a system under the retirement system toward retirement under a local retirement fund, and the retirement system pays the pension amounts on that service to the local fund, the teacher cannot be allowed pension benefits from the retirement system based on those same years for which payments are being made to the local fund as this would clearly amount to a double payment. 1974 Op. Att’y Gen. No. 74-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq. **C.J.S.** — 78 C.J.S., Schools and School Districts, § 486.

47-3-40. Funds in which assets of the retirement system are to be held.

All of the assets of the retirement system shall be credited according to the purpose for which they are held among three funds, to be known as the “annuity savings fund,” the “pension accumulation fund,” and the “expense fund.” (Ga. L. 1943, p. 640, § 8; Ga. L. 1962, p. 723, § 1.)

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County and state contribute to teacher retirement fund of dual agent. — If the county pays any part of the county agent’s salary, even though the agent is assigned to the county by the agricultural (cooperative) extension service of the university, the county agent would be the employee of the

university system and of the county, and, under the terms of Ga. L. 1943, p. 640 (see O.C.G.A. Ch. 3, T. 47), the university system and the county would both be required to contribute to the reserve fund from which teacher retirement benefits are paid. 1948-49 Op. Att’y Gen. p. 528.

47-3-41. Annuity savings fund generally.

(a) The annuity savings fund shall be the fund in which shall be accumulated the contributions deducted from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

(1) After the commencement date, each employer shall cause to be deducted from the salary of each member for each and every payroll period a percentage of the member’s earnable compensation as determined by the board of trustees which shall be not less than 5 nor more than 6 percent; but no such deduction shall be made from the compensation of a member after the close of the school, fiscal, or contract year in which the member has attained age 65 and has completed 40 or more years of creditable service. In determining the amount earnable by a member in a payroll period, the employer may consider the annual rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period. The employer may omit the deduction from compensation for any period which is less than a full payroll period, if a teacher was not a member on the first day of the payroll period. In order to facilitate the making of deductions, the employer may modify the deductions required of any member by an amount not to exceed one-tenth of 1 percent of the annual compensation, on the basis of which such deductions are to be made. Each employer shall immediately pay the amount deducted to the board of trustees, in such manner as the board of trustees shall prescribe, which amount shall be credited by the board of trustees to the individual accounts in the annuity savings fund of the member from whose compensation the deductions were made. Beginning July 1, 1987, the employee contributions required under this paragraph shall be paid as provided in Code Section 47-3-41.1;

(2) Notwithstanding any other provisions of this subsection, at the close of any school, fiscal, or contract year in which a member has completed 40 or more years of creditable service, such member may elect in writing to cease making contributions to the retirement system. If such election is made, such teacher shall notify his employer and the board of trustees in such manner as the board of trustees shall prescribe. After giving the required notice, the employer shall not thereafter deduct, and the employee shall not thereafter be allowed to make, contributions to the retirement system from the salary or compensation of such member;

(3) Any other provision of this or any other law to the contrary notwithstanding, a member who has attained age 65 and who has completed 40 or more years of creditable service may elect to continue to make contributions to the retirement system during such continuous period of time as the member continues in service. He shall notify his employer and the board of trustees of such election in such manner as the board of trustees shall provide. Any member who has discontinued making contributions to the retirement system because he has attained age 65 and has 40 years of creditable service and who has continued in service may remit contributions to the board of trustees at the rate required by law and under terms and regulations prescribed by the board of trustees on all earnable compensation received by the member since deductions were discontinued. Contributions made under this paragraph shall entitle the member to creditable service for such period, but only for the purpose of determining average compensation over the highest consecutive years, used in the calculations of the retirement benefits of such member; and

(4) Employer deductions shall be made, notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions and payment of salary or compensation, less such deductions, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits under this chapter.

(b) Notwithstanding subsection (a) of this Code section, no deductions shall be made from a member's salary if the employer's contribution as to such member is in default.

(c) The contributions withdrawn by a member or payable in the event of his death shall be paid from the annuity savings fund and any balance of the accumulated contributions standing to the credit of his individual account shall be transferred from the annuity savings fund to the pension accumulation fund.

(d) Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings fund to the pension accumu-

lation fund. (Ga. L. 1943, p. 640, § 8; Ga. L. 1950, p. 261, §§ 6, 7; Ga. L. 1961, p. 392, § 4; Ga. L. 1962, p. 723, § 2; Ga. L. 1965, p. 438, § 6; Ga. L. 1966, p. 562, § 2; Ga. L. 1967, p. 126, § 1; Ga. L. 1987, p. 959, § 2; Ga. L. 1994, p. 1663, § 1; Ga. L. 2005, p. 535, § 12/HB 460.)

JUDICIAL DECISIONS

Cited in *Kirksey v. Teachers Retirement Sys.*, 250 Ga. 884, 302 S.E.2d 101 (1983).

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Make greater increase in salary than required to pay superintendent's contribution. — For a local school board to pay a local school superintendent's contributions to the Teachers Retirement System, for health insurance, and social security, the board must increase the superintendent's salary since O.C.G.A. § 47-3-41 provides that such contributions must be deducted from the superintendent's salary. However, the increase of the salary would itself be subject to the required deduction since it would increase

the amount of earnable compensation; thus, the amount of increase required to pay the contribution would obviously have to be more than the amount of the contribution itself. Likewise, for a local school board to make such contributions under the Teachers Health Insurance Plan, the board must increase the superintendent's salary since the law provides that such contributions must be withheld from the superintendent's salary. 1981 Op. Att'y Gen. No. 81-55.

47-3-41.1. Payment of employee contributions by employers; mandatory nature; vesting.

(a) Beginning on July 1, 1987, each employer shall pay to the board of trustees on behalf and to the credit of each member required to make employee contributions under subsection (a) of Code Section 47-3-41, on each and every payroll period, the employee membership contributions specified by said subsection (a) of Code Section 47-3-41 for membership service acquired after June 30, 1987.

(b) Employee contributions made by employers on behalf of members as provided in subsection (a) of this Code section shall be treated as employer contributions in determining federal tax treatment under the United States Internal Revenue Code; provided, however, employers shall continue to withhold federal income taxes on the basis of such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to Section 414(h) of the United States Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available.

(c) Each employer may reduce the compensation payable to a member in an amount not exceeding the amount of the employee contribution paid by the employer on behalf of the member as provided in subsection (a) of this Code section. Such reduction in compensation may be made, notwithstanding the fact that the compensation provided by or pursuant to law for the member may be reduced thereby.

(d) Employee contributions made by employers on behalf of members as provided in subsection (a) of this Code section shall be included in the earnable compensation of members in the computation of retirement benefits, and, except for the purposes of subsection (b) of this Code section, such contributions shall continue to be employee contributions for all purposes under this chapter.

(e) The employee contributions provided for in this Code section are mandatory, and no member is entitled under any circumstances to receive such contributions in cash in lieu of having them contributed to the retirement system. Such contributions shall be 100 percent vested for all purposes under the retirement system.

(f) All members shall retain, have, and be subject to all other rights, privileges, obligations, and duties provided for by other provisions of this chapter and such other provisions shall remain of full force and effect with respect to any matter not specifically provided for in this Code section. (Code 1981, § 47-3-41.1, enacted by Ga. L. 1987, p. 959, § 3; Ga. L. 1990, p. 536, § 2; Ga. L. 2010, p. 427, § 6/HB 969.)

The 2010 amendment, effective May 24, 2010, substituted the present provisions of subsection (e) for the former provisions, which read: “Reserved.”.

U.S. Code. — The United States Internal Revenue Code Section 414(h), referred to in subsection (b), is codified in Title 26, U.S.C. (26 U.S.C. § 1 et seq.).

47-3-42. Employer’s duty to deduct, collect, and remit employee contributions; effect of failure to deduct, collect, and remit such contributions.

(a) It shall be the duty of each county board of education, the board of education of each independent school system, and of each and every employer of teachers to deduct and collect the required employee contributions from each teacher’s salary and to make monthly remittance of such amounts to the board of trustees. Each employer shall likewise make the required employer contribution and shall make monthly remittance of such amounts to the board of trustees along with employee contributions. Each employer shall remit the required employee and employer contributions to the board of trustees by the tenth calendar day of the month following the month for which the contributions were made. In the case of the failure or refusal of the employer to remit the employee and employer contributions on or before the tenth calendar day of the month following the month for which the contributions were made, there shall be added to the total amount of remittance due the sum of 11/2 percent of the amount of the remittance if the failure or refusal is for not more than one month, and an additional 11/2 percent for each additional month or fraction of a month during which the failure or refusal continues.

(b) If any employer fails to collect or remit the employee or employer contributions in the manner set forth in subsection (a) of this Code section,

it shall be the duty of the board of trustees to notify the State Board of Education of such failure and it shall be the duty of the State Board of Education to withhold from the employer which has failed to comply with subsection (a) of this Code section all appropriations allotted to such employer until such employer has fully complied with subsection (a) of this Code section by making remittance of the sums of contributions required of employees and employers under this chapter. (Ga. L. 1947, p. 1155, §§ 1, 2; Ga. L. 1962, p. 723, § 8; Ga. L. 1982, p. 975, §§ 1, 2.)

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Any “employer” means any local board of education for purposes of this statute. 1971 Op. Att’y Gen. No. 71-1 (see O.C.G.A. § 47-3-42).

Local boards pay pension costs upon members’ “earnable compensation.” — Local boards of education having contributing members in their employ must pay to the board of trustees that part of the “cost for pensions” under the retirement system based upon the part of the “earnable compensation” of members not payable from state teachers’ salary funds or other funds of the state. 1970 Op. Att’y Gen. No. 70-38.

State board withholds allocations from

delinquent local unit. — It was the intention of the General Assembly that an action for the recovery of sums due to the board of trustees shall be initiated by a decision of the board and that, upon the receipt of the notice of such a decision, the State Board of Education is obliged to withhold all allocated appropriations from a delinquent local unit until the state board receives from the board of trustees the notice of its decision that the local unit has discharged its obligations to the board of trustees in the manner provided by law. 1971 Op. Att’y Gen. No. 71-1.

47-3-43. Pension accumulation fund generally.

The pension accumulation fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities under this chapter. If a beneficiary is restored to membership, his annuity reserve shall be transferred from the pension accumulation fund to the annuity savings fund and credited to his individual account therein. The pension accumulation fund shall also be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all such pensions and other benefits, as follows:

(1) The contribution of employers of members shall consist of a percentage of the earnable compensation of members to be known as the normal cost contribution and an additional percentage of such earnable compensation to be known as the unfunded accrued liability contribution. The rate of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation, as provided for in Code Section 47-3-23, subject to the provisions of Code Section 47-20-10;

(2) The state’s share of employer contributions, which is to be borne by appropriation from the state, payable to the board of trustees, shall

consist of the normal cost and unfunded accrued liability contributions based on the part of the earnable compensation of members payable from funds of the Board of Regents of the University System of Georgia or other funds of the state, but excluding any appropriations made to the State Board of Education, at the rates determined under this Code section. The balance of the cost for pensions, consisting of the normal cost and unfunded accrued liability contributions at the rates determined under this Code section, shall be borne by the employers having contributing members in their employ, including local units of administration for all members in their employ; and each such employer shall pay, from any funds available to such employer expressly including funds derived from the state under Article 6 of Chapter 2 of Title 20, the "Quality Basic Education Act," such contributions to the board of trustees, immediately upon coming due, which contributions shall be credited to the pension accumulation fund; and

(3) The compensation of a member referred to in this Code section shall include any compensation derived from grants and contracts made by outside agencies with an employer. Such compensation is subject to the employer contribution rate. The outside agencies supplying the grants or entering into the contracts shall pay the applicable employer contributions rate to the employer, who shall pay such contribution to the board of trustees. (Ga. L. 1943, p. 640, § 8; Ga. L. 1956, p. 400, § 2; Ga. L. 1961, p. 392, §§ 5-7; Ga. L. 1962, p. 723, §§ 4, 8; Ga. L. 1970, p. 217, § 2; Ga. L. 1982, p. 3, § 47; Ga. L. 1986, p. 375, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 2005, p. 535, § 13/HB 460.)

OPINIONS OF THE ATTORNEY GENERAL

Local boards pay pension costs upon members' "earnable compensation." — Local boards of education having contributing members in their employ must pay to the board of trustees that part of the "cost for

pensions" under the retirement system based upon members not payable from state teachers' salary funds or other funds of the state. 1970 Op. Att'y Gen. No. 70-38.

47-3-44. Crediting to pension accumulation fund; annual transfer from pension accumulation fund to provide regular interest.

All interest and dividends earned on the funds of the retirement system shall be credited to the pension accumulation fund. Once each year the board of trustees shall transfer from the pension accumulation fund to the annuity savings fund such amounts as are sufficient to allow regular interest on the balances of the individual accounts of members in the annuity savings fund. (Ga. L. 1943, p. 640, § 8; Ga. L. 1962, p. 723, §§ 5, 8.)

47-3-45. Obligations of the pension accumulation fund; permissible uses of the assets of the pension accumulation fund and of income, interest, and dividends.

The maintenance of annuity reserves and pension reserves of the retirement system, the crediting of regular interest to the annuity savings fund, and the payment of all pensions, annuities, retirement allowances, refunds, and other benefits granted under this chapter shall be obligations of the pension accumulation fund, provided that the payments of such other benefit do not adversely affect the qualified status of the retirement system under Section 401(a) of the federal Internal Revenue Code. All assets of the pension accumulation fund and all income, interest, and dividends derived from deposits and investments shall be used for the payment of such obligations and for no other purpose. (Ga. L. 1943, p. 640, § 12; Ga. L. 1962, p. 723, § 10; Ga. L. 2005, p. 535, § 14/HB 460; Ga. L. 2006, p. 93, § 1/SB 466.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 78 C.J.S., Schools and School Districts, §§ 486, 733.

47-3-46. Date on which contributions to the retirement system are to commence.

No contributions to the retirement system shall be made by the state, by employers, or by members prior to the commencement date, except the contribution of the state for an expense fund to pay the expenses of setting up and operating the retirement system prior to that date. On January 1, 1945, the board of trustees shall notify all employers and the employers shall notify the members that contributions will commence on that date; and thereupon this chapter with reference to such contributions will go into effect. (Ga. L. 1943, p. 640, § 8; Ga. L. 1962, p. 723, § 8.)

47-3-47. Purpose of the expense fund.

The expense fund shall be the fund to which shall be credited the state funds appropriated to pay the administrative expenses of the retirement system and from which shall be paid all expenses incurred in its administration and operation. (Ga. L. 1943, p. 640, § 8; Ga. L. 1962, p. 723, § 8.)

47-3-48. Certification to employers of normal and accrued liability contribution rates; estimates by employers of contributions for coming year; requests for appropriations.

Thirty days prior to the time the State Board of Education fixes the minimum schedule of teachers' salaries for the ensuing year, the normal

and accrued contribution rates, as determined on the basis of the last annual actuarial valuation, shall be certified by the board of trustees to each employer having members in its employ. Each such employer other than the state shall include in its budget filed with the State School Superintendent amounts equal to the prospective contributions on account of contributing members in its employ for the ensuing year. The Board of Regents of the University System of Georgia in its estimates of the funds necessary for the operation of its respective units, which estimates are submitted to the Governor and General Assembly, shall include a request for an appropriation payable to the board of trustees in an amount equal to the portion of the normal and accrued liability contributions payable from funds of the Board of Regents of the University System of Georgia or from other state funds and for an additional amount as expense for the operation of the retirement system. The General Assembly shall make appropriations to the board of trustees sufficient to provide for such contributions as a part of the earnable compensation of members payable from such funds and for the necessary expenses of carrying out this chapter. (Ga. L. 1943, p. 640, § 8; Ga. L. 1962, p. 723, § 8; Ga. L. 1986, p. 375, § 2; Ga. L. 1987, p. 146, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Local boards pay pension costs upon members' "earnable compensation." — Local boards of education having contributing members in their employ must pay to the board of trustees that part of the "cost for pensions" under the retirement system based upon the part of the "earnable compensation" of members not payable from state teachers' salary funds or other funds of the state. 1970 Op. Att'y Gen. No. 70-38.

47-3-49. Effective date of chapter; effect of appropriation of funds on the obligation to make employee and employer contributions to the retirement system.

This chapter shall become effective on March 19, 1943, but neither the state nor any other employer or member shall be obligated to make contributions for the pensions and annuities under this chapter until after the General Assembly has by appropriation made available funds for the contribution of the state for its part of such pensions and annuities. (Ga. L. 1943, p. 640, § 14.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

C.J.S. — 78 C.J.S., Schools and School Districts, § 486.

ARTICLE 4

MEMBERSHIP IN THE RETIREMENT SYSTEM

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 809 et seq., 1225 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 311 et seq., 316 et seq. 78 C.J.S., Schools and School Districts, § 486.

ALR. — Re-employment or reinstatement of public officer or employee as restoration of original status as regards incidental rights or privileges, 89 ALR 684.

47-3-60. Eligibility; termination; leaves of absence; service credit for post-graduate study; transfer of service credit.

(a) Any person who becomes a teacher after January 1, 1944, shall become a member of the retirement system as a condition of his or her employment, except as otherwise provided in this chapter.

(b) Any person who was a teacher on January 1, 1943, or became a teacher prior to January 1, 1944, shall be a member unless prior to January 1, 1944, he or she filed with the board of trustees, on a form provided by it, a notice of his or her election not to be included in the membership of the retirement system and a duly executed waiver of all present and prospective benefits which would otherwise accrue to him or her by participating in the retirement system. Such a teacher who elected not to become a member may at any time thereafter apply for and be admitted to membership, but without credit for that service rendered after July 1, 1943, and before the time he or she becomes a member, and without prior service credit.

(c) Reserved.

(d) A teacher otherwise eligible shall be classified as a member only while he or she is in the service of an employer not operating a local retirement system.

(e) The membership of any member shall terminate upon the member's:

(1) Death;

(2) Retirement under this retirement system;

(3) Withdrawal of his or her contributions;

(4) Rendering less than one year of service in a period of five consecutive years as a member; or

(5) Employment by an employer which operates a local retirement fund, unless the member has ten or more years of creditable service with this retirement system, in which case the member may elect to continue

membership in this retirement system, subject to the same terms and conditions as other members.

(e.1) A member who has not withdrawn the member's contributions to the retirement system and who has a break in service of more than four years but not more than five years may be reinstated to membership if the member pays a sum equal to 12 1/2 percent of the member's salary for the last year of service prior to the break in service. A member who has not withdrawn the member's contributions to the retirement system and who has a break in service of more than five years but not more than six years may be reinstated to membership if the member pays a sum equal to 25 percent of the member's salary for the last year of service prior to the break in service. A member who has not withdrawn the member's contributions to the retirement system may be reinstated to membership without paying the reinstatement fees after the member renders at least one year of membership service subsequent to the break in service. All interest credits shall cease after any such break in service but shall begin again on the date of payment of the sum required for reinstatement to membership or on the first day of July immediately following the completion of one year of membership service following the break in service. The board of trustees may approve the continued membership of a member while in the armed forces of the United States or other emergency wartime service of the United States, or a member whose membership would be terminated because of illness which prevents the member from rendering the service otherwise required by this Code section. The board of trustees may also grant an additional year of leave to a teacher for each child born to or adopted by such teacher while on authorized leave.

(f)(1) In the event a member desires to pursue a program of full-time study which will require that he or she render less than one year of service in a period of five consecutive years and which would otherwise result in termination of his or her membership, the board of trustees may approve a leave of absence for study purposes in addition to the normal four-year break in service which the member could otherwise take, so that the combined break in service does not exceed six years. Such study leave shall be continuous. In no event shall such a member's account remain in an active status for longer than six consecutive years for such purpose.

(2) A member who undertakes full-time graduate study designed to advance or improve his or her training or abilities as a teacher is entitled to receive creditable service for a period of graduate study under the following conditions:

(A) The member must have been a full-time teacher in the public schools of this state or in the University System of Georgia under the board of regents immediately prior to the period of graduate study. Any such period of graduate study interrupted solely for a period of active duty military service begun during a period in which the military draft

is in effect shall be deemed not to have been interrupted for purposes of this subparagraph;

(B) The member must submit a transcript or similar document to the retirement system as verification of the graduate study pursued;

(C) The member must return to full-time employment as a teacher in the public schools of this state or in the University System of Georgia under the board of regents for a minimum of five years following such period of graduate study;

(D) The member must pay the appropriate member contributions plus applicable accrued interest in accordance with regulations adopted by the board of trustees on the basis of the salary the member was receiving for full-time employment as a teacher immediately prior to the period of graduate study; and

(E) Either the member's present employer or the member must pay the appropriate employer contributions and applicable accrued interest thereon if the source of funds from which the member was paid immediately prior to his or her period of graduate study was other than state funds.

(3) The foregoing provisions of this subsection shall apply to periods of graduate study heretofore and hereafter granted, but nothing contained in this subsection shall be construed to rescind any creditable service granted prior to July 1, 1981, pursuant to this subsection or its predecessors.

(g) Any other provisions of law to the contrary notwithstanding, if a member with ten or more years' creditable service after becoming a member is employed by an employer operating a local retirement fund, his or her membership does not automatically terminate and he or she may elect to maintain his or her membership rather than participate in the local retirement fund, subject to the same terms and conditions as other members of the retirement system.

(h) New certified professional personnel employed for the first time by the State Board of Education or by the State Department of Education on and after July 1, 1983, shall become members of the retirement system as a condition of employment, unless such personnel elect membership in the Employees' Retirement System of Georgia at the time of their employment. Such election shall be made in writing to the board of trustees of this retirement system and to the board of trustees of the Employees' Retirement System of Georgia. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the State Board of Education or the State Department of Education. The State Board of Education shall provide by regulation for informing prospective employees who are to be employed as certified professional personnel of the

option provided for by this subsection so that such personnel may choose membership in this retirement system or the Employees' Retirement System of Georgia at the time of their employment.

(h.1) Personnel employed for the first time by the State Board of Education or by the State Department of Education on or after July 1, 1988, who, at the time of becoming so employed, are members of this retirement system shall continue as members of this retirement system unless such personnel elect membership in the Employees' Retirement System of Georgia at the time of their employment. Such election shall be made in writing to the board of trustees of this retirement system and to the board of trustees of the Employees' Retirement System of Georgia. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the State Board of Education or the State Department of Education. The State Board of Education shall provide by regulation for informing prospective employees who are subject to the provisions of this subsection of the option provided for by this subsection so that such personnel may choose to continue membership in this retirement system or become members of the Employees' Retirement System of Georgia at the time of their employment.

(i)(1) This subsection shall apply to certified professional personnel in the unclassified service of the State Personnel Administration who are employed by the State Board of Education or the State Department of Education on July 1, 1986, and who are members of the Employees' Retirement System of Georgia and have at least five years of membership service in said retirement system as of July 1, 1986.

(2) This subsection shall also apply to any personnel employed by the State Board of Education or by the State Department of Education at any time before July 1, 1988, who are members of the Employees' Retirement System of Georgia and who, at the time of becoming employed by said state board or department, had ten or more years of membership service in this retirement system.

(3) At any time from July 1, 1988, until not later than July 1, 1989, personnel described in paragraphs (1) and (2) of this subsection are authorized to transfer service credits and membership, including employer and employee contributions, from the Employees' Retirement System of Georgia to this retirement system. Any such personnel electing to transfer such service credits and membership to this retirement system shall be required to make additional contributions to this retirement system so that the annuity account balance of the transferring person shall be the same as though the transferring person had been a member of this retirement system during the period of time for which service credits are transferred from the Employees' Retirement System of Georgia to this retirement system or, in the absence of such payment, the board of trustees of this retirement system shall adjust the transferring

person's credits in proportion to the contributions transferred from the Employees' Retirement System of Georgia to this retirement system. Any such personnel shall exercise the authority provided by this paragraph by written notification to the board of trustees of each of the retirement systems.

(4) If any person who transfers to this retirement system pursuant to the authority of this subsection subsequently becomes employed in a position where membership in the Employees' Retirement System of Georgia is required, any creditable service obtained under this retirement system for teaching service in school systems of other states pursuant to Code Section 47-3-89 shall not be eligible for transfer as creditable service to the Employees' Retirement System of Georgia, notwithstanding the provisions of Code Section 47-2-92 or any other provision of Chapter 2 of this title, relating to the Employees' Retirement System of Georgia.

(j)(1) Newly hired professional personnel employed for the first time by the Technical College System of Georgia on and after July 1, 1985, and all full-time nonprofessional personnel employed for the first time after July 1, 1987, by postsecondary vocational-technical schools governed by the state board shall become members of the Teachers Retirement System of Georgia as a condition of employment if otherwise eligible under laws, rules, and regulations, unless such personnel elect membership in the Employees' Retirement System of Georgia and are otherwise eligible under laws, rules, and regulations. Once such election is made by such personnel, the election is irrevocable during the tenure of employment with the Technical College System of Georgia or any postsecondary vocational-technical school governed thereby. Newly hired employees not eligible for membership in the Teachers Retirement System of Georgia or the Employees' Retirement System of Georgia shall become members of the Public School Employees Retirement System as a condition of employment if eligible. The Technical College System of Georgia shall provide by regulation for informing prospective employees who are to be employed as certified professional personnel of the option provided for by this subsection so that such personnel shall choose membership in the Teachers Retirement System of Georgia or the Employees' Retirement System of Georgia or the Public School Employees Retirement System at the time of their employment.

(2) All full-time employees of a postsecondary vocational-technical school formerly operated by a local board of education or area postsecondary vocational education board as of July 1, 1987, or the date on which the state board assumes governance of the postsecondary vocational-technical school shall elect either to continue membership in the Teachers Retirement System of Georgia or to become members of the Employees' Retirement System of Georgia. Once such election is made by

such personnel, the election is irrevocable during the tenure of employment with the Technical College System of Georgia or any postsecondary vocational-technical school governed thereby. All employees who are members of the Public School Employees Retirement System may elect to continue their membership in the Public School Employees Retirement System or to become members of the Teachers Retirement System of Georgia or the Employees' Retirement System of Georgia if otherwise eligible under laws, rules, or regulations.

(3) If any person who transfers to this retirement system pursuant to the authority of this subsection subsequently becomes employed in a position where membership in the Employees' Retirement System of Georgia is required, any creditable service obtained under this retirement system for teaching service in school systems of other states pursuant to Code Section 47-3-89 shall not be eligible for transfer as creditable service to the Employees' Retirement System of Georgia, notwithstanding the provisions of Code Section 47-2-92 or any other provision of Chapter 2 of this title.

(k) Any other provisions of law to the contrary notwithstanding, any person at least 60 years of age who first becomes a teacher on or after July 1, 1987, and any former member of the retirement system at least 60 years of age who has withdrawn from the retirement system employee contributions made during such former membership again becoming a teacher on or after July 1, 1987, shall have the right to decline membership in the retirement system. The right shall be exercised by sending written notice to the board of trustees on a form provided by the board for such purpose. The right must be exercised within 90 days after becoming a teacher. Any person declining membership in the retirement system pursuant to this subsection shall not at any time thereafter be eligible for membership in the retirement system. Any person failing to exercise the right provided by this subsection within 90 days after becoming a teacher shall become and remain a member of the retirement system as a condition of continued employment. Any employee contributions made during the first 90 days as a teacher by a person who exercises the right provided by this subsection shall be reimbursed to the person within 30 days after the board of trustees receives the written notice declining membership in the retirement system.

(l) Any other provisions of this chapter or of Chapter 2 of this title to the contrary notwithstanding, any member of this retirement system with five or more years of continuous membership service who is employed by Central State Hospital and who, without any break in employment, becomes employed in a position where membership in the Employees' Retirement System of Georgia is ordinarily required shall have the option to remain a member of this retirement system, notwithstanding the change in the member's employment status. Such option shall be exercised by notification, in writing, to the boards of trustees of this retirement system and the

Employees' Retirement System of Georgia. The employer of any such member who exercises the option provided by this subsection shall be an employer for the purposes of this chapter.

(m) Any other provision of law to the contrary notwithstanding, any person who is entitled pursuant to the provisions of this article to make an election between membership in this retirement system and membership in any other retirement system and who subsequently retires and is rehired by the same employer which employed him or her immediately prior to retirement shall continue membership in the retirement system under which he or she initially retired and shall not be entitled to elect membership in any other retirement system. (Ga. L. 1943, p. 640, § 3; Ga. L. 1947, p. 1494, § 1; Ga. L. 1952, p. 254, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 270, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 394, § 1; Ga. L. 1959, p. 319, § 1; Ga. L. 1960, p. 1116, § 3; Ga. L. 1961, p. 388, § 2; Ga. L. 1964, p. 699, § 1; Ga. L. 1969, p. 384, § 1; Ga. L. 1971, p. 409, § 1; Ga. L. 1972, p. 896, § 1; Ga. L. 1973, p. 903, § 1; Ga. L. 1975, p. 1579, § 1; Ga. L. 1976, p. 1458, § 1; Ga. L. 1977, p. 825, § 1; Ga. L. 1979, p. 1007, § 1; Ga. L. 1980, p. 828, § 1; Ga. L. 1981, p. 1327, § 1; Ga. L. 1983, p. 1859, § 4; Ga. L. 1985, p. 209, § 1; Ga. L. 1986, p. 1543, § 3; Ga. L. 1986, p. 1547, §§ 1, 2; Ga. L. 1987, p. 575, § 9; Ga. L. 1987, p. 959, § 4; Ga. L. 1988, p. 1351, §§ 3, 4; Ga. L. 1988, p. 1742, § 3; Ga. L. 1992, p. 477, § 1; Ga. L. 1993, p. 1690, § 4; Ga. L. 1996, p. 389, § 1; Ga. L. 2000, p. 1268, § 1; Ga. L. 2008, p. 562, § 1/SB 434; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2010, p. 1207, § 41/SB 436.)

The 2008 amendment, effective July 1, 2008, substituted "Technical College System of Georgia" for "Department of Technical and Adult Education" three times in paragraph (j)(2) and once in paragraph (j)(3).

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" in the middle of paragraph (i)(1).

The 2010 amendment, effective July 1, 2010, throughout this Code section, inserted "or her" and "or she"; and substituted "Reserved." for the former provisions of subsection (c), which read: "Any teacher who was alive as of March 28, 1947, who has reached the age of 60, who had taught for at least 35 years as of March 19, 1943, in the public schools of the state operated by the Department of Education or any of the state educational institutions financed by this state and who retired from service in such schools or educational institutions before March 19, 1943, shall be deemed a member of the retirement system. Benefits to be paid to such a member shall be computed on the

average earnings received by such a member for the last five years of actual service rendered in such schools and educational institutions."

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, subsections (j) and (k) were redesignated as subsections (k) and (l).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be sub-

ject to the statutory provisions in effect on June 30, 2010.”

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

REQUIRED MEMBERSHIP

CONTINUANCE OF MEMBERSHIP

STUDY LEAVE

WITHDRAWAL

LOCAL RETIREMENT FUND

Required Membership

Librarians and clerical personnel required to be members. — Regional and county librarians, and clerical personnel employed by libraries, are required to be members of the retirement system and may not, in lieu of membership in the retirement system, choose to be members of a local retirement system for such employees. 1975 Op. Att’y Gen. No. 75-46.

Teachers at charter schools shall be members of the Teachers Retirement System. 1999 Op. Att’y Gen. No. U99-4.

Continuance of Membership

Grants of continuance cannot be made retroactive. — Statute applies only to those members who were granted a continuance of membership by the board of trustees prior to the time of taking of leave, and there is no provision providing for the board to make any of the board’s grants of continuance retroactive. 1952-53 Op. Att’y Gen. p. 348 (see O.C.G.A. § 47-3-60).

Member cannot receive credit for service in armed forces. — While the board may continue the membership or keep the membership status of a member while in the armed forces of the United States, the member cannot receive credit for service as a teacher to count toward the member’s years for retirement, and it follows that there is no sound reason for placing the retirement system in a position of accepting and handling the member’s total voluntary contributions to the system while in the armed services if the member is not receiving creditable years of teacher service during the time of the member’s military service. 1950-51 Op. Att’y Gen. p. 286.

Drafted teacher’s subsequent graduate school study not creditable. — Teacher who

was drafted, entered military service, subsequently went to graduate school and then returned to teaching was not entitled to creditable service for period of graduate study under either paragraph (f)(2) of O.C.G.A. § 47-3-60 or the Vietnam Era Veterans’ Readjustment Assistance Act, 38 U.S.C., § 2021 et seq. 1983 Op. Att’y Gen. No. 83-36.

Study Leave

Former member not entitled to credit for study leave. — Former member of the Teachers Retirement System of Georgia, who is now a member of the Employees’ Retirement System of Georgia, is not entitled to any creditable service for study leave. 1976 Op. Att’y Gen. No. U76-25.

Withdrawal

Withdrawal means teacher no longer member. — Teacher who withdraws the teacher’s contributions with interest from retirement system is no longer a “member” of the retirement system as that term is employed in Ga. L. 1975, p. 1579, § 1. 1976 Op. Att’y Gen. No. 76-19.

Chapter applicable to formerly terminated member who becomes member again. — An individual who severs the individual’s relationship and terminates the individual’s membership with the retirement system, but who becomes a member again at a later date, establishes a new employment contract, incorporated within which are the provisions of Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47) existent at the time the new contract is formed. 1977 Op. Att’y Gen. No. 77-75.

Reemployment reestablishes service credit when pay withdrawn contributions. — Teachers who establish out-of-state service

Withdrawal (Cont'd)

credit and subsequently withdraw from the retirement system may, upon their reemployment as teachers in Georgia, reestablish such service credit by paying into the system the amount of the withdrawn contributions, plus interest. 1973 Op. Att'y Gen. No. 73-45.

Member withdrawing contributions cannot retroactively revive contract. — Member withdrawing the member's contributions has severed the member's contract with the Teachers Retirement System and thus ended any contractual right which may have existed prior to that severance. Therefore, that individual would not be able to revive the contract by retroactively treating a separation from employment as a leave of absence with the employing institution. 1988 Op. Att'y Gen. No. 88-18.

Local Retirement Fund

Local retirement fund precludes membership in retirement system. — Teachers employed by employer operating a local retirement fund cannot be members of retirement system, although the teachers denied participation in the local system. 1945-47 Op. Att'y Gen. p. 212.

Teacher moving into local retirement fund may remain in retirement system. — Paragraph (e)(5) of Ga. L. 1977, p. 825, § 1 (see O.C.G.A. § 47-3-60) was specifically enacted to allow retirement system members with ten or more years of creditable service to elect to remain in the retirement system even though the members had become employed by an employer operating a local retirement fund; this change ameliorated the harsh result realized by teachers who, prior to the enactment of Ga. L. 1977, p. 825, § 1 decided to leave a retirement-system-covered school system in which the members had taught ten or more years and move to teaching positions in school systems with local retirement funds, thus having to relinquish

their right to retirement system membership under Ga. L. 1977, p. 825, §§ 6 and 7 (see O.C.G.A. § 47-3-65). 1978 Op. Att'y Gen. No. U78-24.

Provision is only applicable to teachers under local fund subsequent to April 25, 1975. 1976 Op. Att'y Gen. No. 76-19.

Teacher not allowed pension based on local retirement fund years. — If a teacher has 13 years of accrued creditable service under the retirement system acquired before July 1, 1943 (now January 1, 1945), immediately prior to joining a local system, and that teacher applies ten of those years toward a local retirement fund, that retired teacher would have to serve five years of membership service under the retirement system at some time to be eligible for the normal retirement benefits payable on the three years not applied to the local system, or alternatively, the minimum "floor" benefit on those three years, whichever is greater; also, if this teacher acquires the necessary five years of membership service in order to qualify for the creditation of prior service as a "regular member" of the retirement system, the teacher would be entitled to a benefit based on what would have been the annuity contributions during the ten transferred years had that teacher actually been paying contributions during that period; this teacher, however, would not be entitled to the pension amounts on these ten years applied to the local fund because those amounts must be paid to the local fund. 1950-51 Op. Att'y Gen. No. 75-113.

When disabled teacher from local system eligible for retirement system. — Teacher in a local school system operating its own pension plan who retires because of a disability after the enactment of Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47) but before the local system votes to become a part of the state system would be eligible for disability retirement benefits under the retirement system. 1950-51 Op. Att'y Gen. p. 52.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1252.

C.J.S. — 78 C.J.S., Schools and School Districts, § 486.

47-3-61. Membership of persons who teach in both a public and private school system; payment of employer contributions for such persons.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 42, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1969, p. 227, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any

person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-3-62. Membership of visiting teachers and attendance officers employed in lieu of visiting teachers.

(a) Visiting teachers employed under Subpart 2 of Part 1 of Article 16 of Chapter 2 of Title 20 shall have the same status under the retirement system as regular classroom teachers or supervisors whose employment requires that they hold valid certificates issued by authority of the state.

(b) For service rendered after June 30, 1992, attendance officers employed in lieu of visiting teachers, if employed not less than half time, shall be members of the retirement system. (Ga. L. 1945, p. 343, § 8; Ga. L. 1992, p. 2182, § 2.)

RESEARCH REFERENCES

C.J.S. — 78A C.J.S., Schools and School Districts, § 1027 et seq.

47-3-63. Membership of full-time public school support personnel; employee and employer contributions; creditable service.

(a) In accordance with Code Section 47-4-40, full-time public school lunchroom, maintenance, or warehouse managers or supervisors or full-time public school transportation managers or supervisors including those employed by postsecondary vocational-technical schools governed by the Technical College System of Georgia may elect to become members of the Teachers Retirement System of Georgia. Any such personnel exercising such option shall begin making the employee contributions required by this chapter.

(b) Members (1) who were previously eligible for membership in the Public School Employees Retirement System and whose duties were or have

been changed in such a manner so as to have made them eligible for membership in the Teachers Retirement System of Georgia and (2) any personnel specified in subsection (a) of this Code section who elect to become members of the Teachers Retirement System of Georgia shall be permitted to establish credit for service rendered in a public school system prior to the date such employees become or became members of the Teachers Retirement System of Georgia, provided that such service would be or would have been normally allowable as creditable service under the Public School Employees Retirement System; provided, further, that such members must pay the employee contributions on the salary earned by such members during the years of service sought to be so established, plus applicable accrued regular interest compounded annually to the dates of payment at the rates adopted by the board of trustees. Such members or the local boards of education by which the members are employed at the time the service is established shall pay the employer contributions on the earnable compensation of such members that would have been paid to the Teachers Retirement System of Georgia, plus applicable accrued regular interest compounded annually to the dates of payment at the rates adopted by the board of trustees.

(c) The State of Georgia shall be the employer of personnel specified in subsection (a) of this Code section for the purposes of employer contributions on membership service rendered by such members after they become members of the Teachers Retirement System of Georgia; provided, however, that a local school system shall pay the employer contributions for the number of its managers or supervisors in each category of employment set forth in subsection (a) of this Code section who are members of this retirement system pursuant to this Code section which exceeds one person or 7 percent, whichever is greater, of the total number of employees of such local school system in such category; provided, further, that the state shall continue to pay employer contributions for all members who became members of this system pursuant to this Code section prior to April 1, 1992. (Ga. L. 1976, p. 577, § 4; Ga. L. 1978, p. 1997, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1982, p. 965, § 2; Ga. L. 1987, p. 575, § 10; Ga. L. 1988, p. 1742, § 4; Ga. L. 1992, p. 2528, § 1; Ga. L. 2008, p. 562, § 1/SB 434.)

The 2008 amendment, effective July 1, 2008, substituted “Technical College System of Georgia” for “Department of Technical and Adult Education” in the first sentence of subsection (a).

47-3-64. Public school teachers and employees who are covered by local retirement fund and who accept employment with private nonsectarian schools eligible for state grants.

Reserved. Repealed by Ga. L. 2005, p. 504, § 1/HB 373, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1957, p. 8, § 1; Ga. L. 1982, p. 3, § 47.

47-3-65. Membership, rights, and benefits in local retirement funds.

Except as otherwise provided by paragraph (5) of subsection (e) of Code Section 47-3-60, teachers in the service of an employer operating a local retirement fund shall not be members of the Teachers Retirement System of Georgia. Such teachers shall make no contributions to this retirement system and shall be eligible for pension benefits under this retirement system only under this Code section. If such a teacher retires under his or her local retirement fund and if at the time of his or her retirement he or she would have been eligible for service retirement under this retirement system had he or she been a member, the board of trustees shall pay from this retirement system to the managing board of the local retirement fund a pension equal to the pension for membership service which would have been payable under this retirement system in respect to the part of his or her earnable compensation payable from state funds if such member had been classified as a member of this retirement system immediately prior to the time of his or her retirement; provided, however, upon service retirement of any teacher who is a member of a local retirement fund, the local retirement fund under which such teacher retired shall receive a service retirement pension on account of his or her service thereunder, in accordance with the provisions of this Code section, which shall consist of:

(1) A pension equal to the annuity which would have been allowable at age of retirement if such teacher had been a member of this retirement system and had made contributions of 5 percent of his or her earnable compensation payable from state funds, but not to exceed an annuity allowable at age 65, computed on the basis of such contributions as would have been made prior to age 65; and

(2) If he or she has a prior service certificate in full force and effect, an additional pension equal to the annuity which would have been provided at age of retirement, but not to exceed an annuity which would have been provided at age 65 by three times the amount of his or her prior service accumulations as heretofore defined, with regular interest thereon from time to time in effect from the date of establishment until the date of his or her retirement, but not beyond age 65.

It shall be the duty of the employers operating local retirement funds to report to the board of trustees annually or at such other intervals as shall be set by the board of trustees the earnable compensation paid from state funds of each teacher in their employ who is paid from state funds and such other information as may be needed for establishing the prospective benefit of the member. (Ga. L. 1943, p. 640, § 9; Ga. L. 1953, Nov.-Dec. Sess., p. 341, § 1; Ga. L. 1962, p. 723, § 9; Ga. L. 1966, p. 564, § 2; Ga. L. 1977, p.

825, §§ 6, 7; Ga. L. 1981, p. 1892, § 2; Ga. L. 1981, p. 1894, § 4; Ga. L. 1993, p. 86, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2010, p. 1207, § 43/SB 436.)

The 2010 amendment, effective July 1, 2010, rewrote this Code section.

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

JUDICIAL DECISIONS

Cited in Fulton County School Employees Pension Fund v. Teachers Retirement Sys., 176 Ga. App. 612, 337 S.E.2d 57 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Local retirement fund precludes membership in retirement system. — Teachers employed by employer operating local retirement fund may not be members of retirement system, although the teachers are denied participation in the local system. 1945-47 Op. Att'y Gen. p. 212.

Teacher moving into local retirement fund may remain in system. — Section 47-5-60(e)(5)(now deleted) was specifically enacted to allow retirement system members with ten or more years of creditable service to elect to remain in the retirement system even though they had become employed by an employer operating a local retirement fund; this change ameliorated the harsh result realized by teachers who, prior to the enactment of this provision, decided to leave a retirement-system-covered school system in which they had taught ten or more years and move to teaching positions in school systems with local retirement funds, thus having to relinquish their right to retirement system membership under subsection (a) of this statute. 1978 Op. Att'y Gen. No. U78-24 (see O.C.G.A. § 47-3-65).

Moving member cannot withdraw contributions to system. — Member cannot withdraw contributions to retirement system upon entering employment of employer operating local fund. 1970 Op. Att'y Gen. No. 70-80.

Right to receive state payments vests when information furnished. — Legal right to receive pension payments from the retirement system does not vest in the local retirement fund until such time as the information needed to establish the prospective benefit is furnished by the employers operating the local retirement system. 1954-56 Op. Att'y Gen. p. 612.

Teacher not allowed pension based on local retirement fund years. — If a teacher includes previous service in a system under the retirement system toward retirement under a local retirement fund, and the retirement system pays the pension amounts on that service to the local fund, the teacher cannot be allowed pension benefits from the retirement system based on those same years for which payments are being made to the local fund as this would clearly amount to a double payment. 1974 Op. Att'y Gen. No. 74-21.

If a teacher has 15 years of accrued creditable service under the retirement system acquired after July 1, 1943, and if that teacher applies ten of those years toward a local retirement fund, after retirement at age 65, the teacher would be entitled to normal retirement benefits from the retirement system based on the five years which were not applied to the local system's ac-

count for that teacher or, in the alternative, whichever is greater. 1975 Op. Att’y Gen. No. 75-113.
to the minimum “floor” on these five years,

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1229 et seq., 1231. **C.J.S.** — 67 C.J.S., Officers and Public Employees, § 311 et seq. 78 C.J.S., Schools and School Districts, § 338 et seq.

47-3-66. Membership of teachers who are employed by independent school systems; creditable service.

- (a) As used in this Code section, the term:
 - (1) “Independent school system” means the independent school system of a municipality.
 - (2) “Local retirement fund” means a local retirement fund covering teachers employed by an independent school system.
 - (3) “Municipality” means any municipality of this state having a population of 300,000 or more according to the United States decennial census of 1970 or any future such census.
 - (4) “Teacher” means any teacher as defined by Code Section 47-3-1 who is employed by an independent school system.
- (b) Any teacher who is employed by an independent school system after July 1, 1979, shall become a member of the retirement system as a condition of employment, and such teacher shall not be eligible for membership in a local retirement fund.
- (c) Teachers who are actively employed on July 1, 1979, by an employer operating under a local retirement fund may elect to transfer from membership in the local retirement fund to membership in the Teachers Retirement System of Georgia, effective July 1, 1979. Such election must be made before July 1, 1979, in a manner prescribed by the board of trustees. All such teachers who transfer their membership to the retirement system under this Code section shall receive creditable service under the retirement system, equivalent to the creditable service such teachers had under the local retirement fund as of the date all payments are made as provided in subsections (d) and (e) of this Code section, provided that no creditable service shall be granted for service which would not otherwise be allowable under the retirement system. The board of trustees shall cause the records of such transferred teachers, after verification in the manner prescribed by the board of trustees, to reflect such creditable service.
- (d) For each teacher becoming a member of the retirement system pursuant to subsection (c) of this Code section, the fiscal authority or other governing body, by whatever name designated, of the local retirement fund shall be empowered and shall have the duty to pay to the board of trustees

the amount of contributions paid by such teacher to the local retirement fund and credited to each such teacher under it, together with applicable accrued regular interest, as determined by the board of trustees, to the date of payment. The fiscal authority or other governing body shall have the duty to notify the board of trustees as to the amount paid on behalf of each such teacher. Such payment shall be made to the board of trustees by not later than October 1, 1979, or by the date of retirement of any teachers who retire prior to October 1, 1979, whichever is earlier.

(e) Each teacher who becomes a member of the retirement system pursuant to subsection (c) of this Code section shall pay to the board of trustees the amount of contributions which would have been paid by the teacher to the retirement system had the teacher been a member of the retirement system during the period of creditable service established pursuant to subsection (c) of this Code section, plus interest, as provided in this subsection, which would have accumulated on such contributions, less the amount paid on behalf of each such teacher pursuant to subsection (d) of this Code section. Interest which would have accumulated on such contributions shall be computed on the basis of regular accrued interest until January 1, 1982, and on the basis of 16 percent per annum from January 1, 1982, until the payment required by this subsection is made. The board of trustees shall determine the amount to be paid as interest. Such payment shall and must be made to the board of trustees in the manner prescribed by the board of trustees by not later than December 31, 1983, or by the date of retirement for any teacher who retires prior to December 31, 1983, whichever is earlier. (Ga. L. 1979, p. 1196, § 1; Ga. L. 1982, p. 1610, §§ 1, 2; Ga. L. 1985, p. 209, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2010, p. 1207, § 44/SB 436.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” six times in subsection (i). The second 2010 amendment, effective July 1, 2010, deleted former subsections (f) through (m). See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — The amendment of this Code section by Ga. L. 2010, p. 863, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 1207, § 44. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly,

provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

OPINIONS OF THE ATTORNEY GENERAL

Constitutional amendment needed to increase benefits. — Constitutional amendment would be necessary to authorize an increase in retirement benefits, to be paid from state funds, to retired teachers in any local system funded through appropriations made by municipal corporations, counties, or any political subdivision. 1974 Op. Att’y Gen. No. 74-14 (rendered under 1945 Constitution).

Teachers transferring to Teachers Retirement System pursuant to O.C.G.A. § 47-3-66

must pay amount of employee contributions the teachers would have paid to Teachers Retirement System had the teachers been members during period of creditable service sought to be established, less amount of the teachers’ contributions already paid by local retirement fund to the System, by no later than January 1, 1982. No creditable service will be established under § 47-3-66 by any transferring teacher not making the required payment by January 1, 1982. 1981 Op. Att’y Gen. No. 81-81.

47-3-67. Membership of teachers who are employed by certain county school systems; transfer from local retirement fund; creditable service; contributions.

(a) As used in this Code section, the term:

(1) “Continuous service” means active continuous employment in the county school system interrupted only by a leave duly authorized and granted by the county school system.

(2) “County” means any county of this state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census.

(3) “County school system” means the local school system of a county.

(4) “Local retirement fund” means a local retirement fund covering teachers employed by a county school system.

(5) “Teacher” means any teacher as defined by paragraph (28) of Code Section 47-3-1 who is employed by a county school system.

(6) “Transferred teacher” means a teacher who is transferred from membership in a local retirement fund to membership in the Teachers Retirement System of Georgia by subsection (c) of this Code section.

(b) Any teacher who becomes employed by a county school system on or after July 1, 1988, shall become a member of the retirement system as a condition of employment, and such teacher shall not be eligible for membership in a local retirement fund.

(c) Effective on July 1, 1988, all teachers who are actively employed by a county school system on that date and who were so employed prior to that date and who are enrolled on that date under the local retirement fund in a retirement plan with an effective date on or after April 1, 1962, shall be transferred to and become members of the Teachers Retirement System of Georgia and, subject to the provisions of subsection (d) of this Code

section, shall cease to be members of the local retirement fund, except that any such teacher who has previously retired from the Teachers Retirement System of Georgia shall be excluded from such transfer. Each such transferred teacher shall receive creditable service under the Teachers Retirement System of Georgia equivalent to the creditable service the teacher had under the local retirement fund as of July 1, 1988, provided that creditable service shall not be granted for service which would not be allowable as creditable service under the Teachers Retirement System of Georgia.

(d) If the benefit which becomes payable to a transferred teacher upon the teacher's retirement or to another beneficiary of a transferred teacher is less under this retirement system than it would have been under the local retirement fund had membership in the local retirement fund continued, then the fiscal authority or other governing body, by whatever name designated, of the local retirement fund shall pay to the retired transferred teacher or to the other beneficiary of such a teacher an additional benefit equal to the amount by which the benefit which would be payable under the local retirement fund exceeds the benefit which becomes payable under this retirement system, with the benefit under this retirement system being computed for purposes of this Code section as if the teacher had retired with a retirement allowance determined under Code Section 47-3-120. The calculation of the additional benefit, if any, which is to be paid by the local retirement fund under this subsection shall be based on the rights that a transferred teacher had under the local retirement fund on June 30, 1988, plus rights which would have accrued under the local retirement fund after that date only for continuous service as a teacher in the employ of the county school system; provided, however, that any change made in the local retirement fund after that date shall not be considered in the determination of such rights; provided, further, that any amendment to any such local retirement fund made after June 30, 1988, which provides for the calculation of benefits on a nine-month basis, provides for optional spouses' benefits, or provides for the continuation of spouses' benefits after remarriage shall be considered in the determination of such rights. The benefits payable under this subsection shall be made only if the transferred teacher shall have timely paid to the local retirement fund all amounts which such teacher would have paid to such fund, had he or she continued to be a member of such fund, less such amounts as were actually paid to the Teachers Retirement System of Georgia by or on behalf of such teacher.

(d.1) Until such time as the rate of employee contribution required of all members of the Teachers Retirement System of Georgia shall be increased, no transferred teacher who remains in the employ of the county school system shall be required to pay any greater percentage of the teacher's salary to the Teachers Retirement System of Georgia than such transferred teacher would have been required to pay to the local retirement fund had such teacher remained a member of the local retirement fund. In the event

that a contribution in excess of such amount shall be required by the Teachers Retirement System of Georgia, such excess contribution shall be made by the county school system; provided, however, that any increase in the rate of employee contribution required of all members of the Teachers Retirement System of Georgia after July 1, 1988, shall be paid for by the transferred teacher.

(e)(1) For each transferred teacher, the fiscal authority or other governing body, by whatever name designated, of the local retirement fund shall pay to the board of trustees the amount of employee contributions which would have been paid by the teacher to the retirement system had the teacher been a member of the retirement system during the period of creditable service established pursuant to subsection (c) of this Code section, plus applicable accrued regular interest thereon, as determined by the board of trustees, to the date of payment.

(2) The board of trustees shall make the determination of the amount to be paid to the board under paragraph (1) of this subsection and the fiscal authority or other governing body, by whatever name designated, of the local retirement fund shall pay the amount so determined to the board of trustees by not later than August 1, 1988.

(e.1)(1) Any excess employee contributions paid to the Teachers Retirement System of Georgia pursuant to the provisions of subsection (d.1) of this Code section shall be paid into the pension accumulation fund and shall not constitute "accumulated contributions" within the meaning of paragraph (1) of Code Section 47-3-1 or for the purposes of Code Section 47-3-128.

(2) From the funds paid to the board of trustees pursuant to the provisions of subsection (e) of this Code section, that portion thereof representing employee contributions paid to the local retirement fund by the transferred teacher shall be paid into the annuity savings fund and shall constitute "accumulated contributions" within the meaning of paragraph (1) of Code Section 47-3-1 and for the purposes of Code Section 47-3-128; and the remaining portion shall be paid into the pension accumulation fund and shall have the same status as excess employee contributions described in paragraph (1) of this subsection.

(3) The board of trustees shall keep appropriate records to identify the funds paid into the pension accumulation fund pursuant to paragraphs (1) and (2) of this subsection. In the event a transferred teacher ceases to be a member of the Teachers Retirement System of Georgia and withdraws accumulated contributions pursuant to the provisions of Code Section 47-3-128, the board of trustees shall refund to the county school system an amount equal to the funds paid into the pension accumulation fund pursuant to paragraphs (1) and (2) of this subsection plus regular interest on that amount.

(e.2)(1) If a transferred teacher who has maintained continuous service with the county school system or a beneficiary of such a transferred teacher does not qualify to receive a monthly benefit under this retirement system but would be qualified to receive a monthly benefit under the local retirement fund if the transferred teacher's membership in the local retirement fund had continued, such transferred teacher or the beneficiary of such transferred teacher may elect to receive a monthly benefit under the provisions of subsection (d) of this Code section. If such transferred teacher or a beneficiary of such transferred teacher thereafter qualifies to receive a monthly benefit under this retirement system, the amount payable to the transferred teacher or beneficiary under subsection (d) of this Code section shall be reduced accordingly.

(2) A transferred teacher or a beneficiary of a transferred teacher who makes the election provided for in paragraph (1) of this subsection shall not be entitled to a refund of the accumulated contributions which have been credited to the transferred teacher's account at the time of said election. If such a transferred teacher subsequently returns to active service, this paragraph shall not apply to accumulated contributions credited to the transferred teacher's account after returning to active service.

(3) If a transferred teacher who makes the election provided for in paragraph (1) of this subsection does not at any time thereafter qualify to receive a monthly benefit under this retirement system and if no beneficiary of the transferred teacher is qualified to receive a monthly benefit under this retirement system upon the death of the transferred teacher, then upon the death of such transferred teacher, the board of trustees shall pay to the county school system an amount equal to the accumulated contributions of the deceased transferred teacher and an amount equal to the funds paid into the pension accumulation fund pursuant to paragraphs (1) and (2) of subsection (e.1) of this Code section, plus regular interest on that amount. The board of trustees shall maintain such records as may be necessary to comply with the provisions of this paragraph.

(f) Any full-time public school lunchroom managers or supervisors, full-time public school maintenance managers or supervisors, full-time public school transportation managers or supervisors, or full-time public school warehouse managers or supervisors who become members of this retirement system pursuant to the provisions of this Code section or Code Section 47-3-66 shall have the right to obtain creditable service under this retirement system pursuant to the provisions of subsection (b) of Code Section 47-3-63 on the same basis that other members of this retirement system who are subject to the provisions of Code Section 47-3-63 obtain creditable service. (Code 1981, § 47-3-67, enacted by Ga. L. 1988, p. 1837, § 1; Ga. L. 1989, p. 314, §§ 1, 2; Ga. L. 1990, p. 518, §§ 1, 2; Ga. L. 1993,

p. 1402, § 18; Ga. L. 1996, p. 727, § 1; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2010, p. 1207, § 45/SB 436.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” six times in subsection (j). The second 2010 amendment, effective July 1, 2010, deleted former subsections (f) through (l) and redesignated former subsection (m) as present subsection (f). See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — The amendment of this Code section by Ga. L. 2010, p. 863, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 1207, § 45. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

Editor’s notes. — Ga. L. 2010, p. 1207,

§ 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-3-68. Membership of eligible university system employees.

(a)(1) The provisions of this paragraph shall apply to persons employed prior to July 1, 2008. As used in this Code section, the term “eligible university system employee” means faculty and principal administrators employed by the University System of Georgia, as designated by regulations of the Board of Regents of the University System of Georgia, who are:

(A) Employed on or after July 1, 1990, and are eligible for membership in the retirement system provided for in this chapter as of the date of employment; or

(B) Members of the retirement system provided for in this chapter on July 1, 1990, with less than ten years of creditable service on that date.

(2) The provisions of this paragraph shall apply to persons first or again employed on or after July 1, 2008. As used in this Code section, the term “eligible university system employee” means faculty members or exempt employees within the meaning of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 201, et seq., who are eligible for membership in the retirement system provided for in this chapter as of the date of such employment.

(b) Any other provisions of this chapter to the contrary notwithstanding, any eligible university system employee may withdraw from or decline membership in the retirement system provided for in this chapter and

participate in the optional retirement plan provided for in Chapter 21 of this title as provided in this Code section.

(c) Members of the retirement system provided for in this chapter who were eligible university system employees on July 1, 1990, shall have the option to withdraw from this retirement system and participate in the optional retirement plan provided for in Chapter 21 of this title. Members exercising said option, which shall be irrevocable, shall forfeit all rights under this retirement system except that they shall have the right to have their accumulated contributions under this retirement system transferred to the optional retirement plan. Upon such election's becoming effective, the board of trustees shall transfer the member's accumulated contributions directly to the optional retirement plan to purchase benefits thereunder and the funds so transferred will not be made available to the member except as a participant in the optional retirement plan. The option provided for in this Code section shall be exercised by filing a written notification thereof with the board of trustees and with the employer by not later than July 31, 1991. The effective date of the option and transfer for each member who elects to become a new participant in the optional retirement plan shall be August 1, 1991. The failure to exercise the option by July 31, 1991, shall be an irrevocable election to remain a member of this retirement system.

(d) Eligible university system employees employed on or after July 1, 1990, shall, within 30 days immediately following the effective date of their employment, make an irrevocable decision to be a member of this retirement system or participate in the optional retirement plan provided for in Chapter 21 of this title; provided, however, that such employees employed on or after July 1, 1995, shall make such irrevocable decision within 60 days immediately following the effective date of their employment. A written statement of the decision shall be filed with the employer and with the board of trustees and shall be effective from the date of employment. If an eligible university system employee fails to file a statement of decision provided for in this subsection, such failure shall be an irrevocable election to become a member of the retirement system provided for in this chapter.

(e) Any former member of this retirement system who is presently a participant in the optional retirement plan provided for in Chapter 21 of this title shall have the right to have the former member's accumulated contributions to this retirement system transferred to said optional retirement plan. Such right shall be exercised by filing a written notification thereof with the board of trustees by not later than July 31, 1991. After receiving such notification, the board of trustees shall, by not later than October 1, 1991, transfer the former member's accumulated contributions directly to the optional retirement plan to purchase benefits thereunder and the funds so transferred will not be made available to the former member except as a participant in the optional retirement plan.

(f) Any member of this retirement system who was employed on July 1, 2004, as an assistant coach by the athletic department of a state university may make an irrevocable decision to participate in the optional retirement plan provided by Chapter 21 of this title. Such election shall be made to the employer and the board of trustees not later than August 31, 2004. The board of trustees shall transfer to such member's account in such optional retirement plan all employer and employee contributions made by or on behalf of such member together with regular interest thereon. (Code 1981, § 47-3-68, enacted by Ga. L. 1990, p. 1811, § 1; Ga. L. 1991, p. 614, §§ 1, 2; Ga. L. 1995, p. 334, § 1; Ga. L. 2004, p. 448, § 1; Ga. L. 2008, p. 347, § 1/HB 815.)

The 2008 amendment, effective July 1, 2008, in subsection (a), designated the existing provisions as paragraph (a)(1); in paragraph (a)(1), added the first sentence; redesignated former paragraphs (a)(1) and (a)(2) as present subparagraphs (a)(1)(A) and (a)(1)(B), respectively; and added paragraph (a)(2).

ARTICLE 5

SERVICE CREDITABLE TOWARD RETIREMENT BENEFITS

JUDICIAL DECISIONS

Authority of local school boards to set individual retirement policies, see Davis v. Griffin-Spalding County Bd. of Educ., 445 F. Supp. 1048 (N.D. Ga. 1975) (decided under Ga. L. 1943, p. 640, § 4, as amended).

OPINIONS OF THE ATTORNEY GENERAL

In five-year average salary, "year" may mean 12 months. — For the purposes of awarding a year of creditable service and determining a member's five-year average salary for computing benefits, the board of trustees may, by rule or regulation, employ the word "year" to mean a continuous 12 month period of time. 1976 Op. Att'y Gen. No. 76-84.

Teacher not allowed dual pension benefits. — If a teacher includes previous service in a system under the retirement system toward retirement under a local retirement fund, and the retirement system pays the pension amounts on that service to the local fund, the teacher cannot be allowed pension benefits from the retirement system based on those same years for which payments are being made to the local fund as this would clearly amount to a double payment. 1974 Op. Att'y Gen. No. 74-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1187 et seq., 1231.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 311 et seq. 78 C.J.S., Schools and School Districts, § 481 et seq.

ALR. — Services included in computing period of service for purpose of teachers' seniority, salary, or retirement benefits, 2 ALR2d 1033.

Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes, 6 ALR2d 506.

47-3-80. Power of the board of trustees to determine which service is creditable service.

The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of creditable service, but in no case shall more than one year of service be creditable for all service in one calendar year. Service rendered for a regular school year shall be equivalent to one year of creditable service. (Ga. L. 1943, p. 640, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq. **C.J.S.** — 78 C.J.S., Schools and School Districts, § 492 et seq.

47-3-81. Transfer of service credits from Employees' Retirement System of Georgia; limitations; additional contributions or adjustments required.

(a) Any other provisions of law to the contrary notwithstanding, any member, other than a member subject to subsection (b) of this Code section, who was previously a member of the Employees' Retirement System of Georgia and who has service credits with said employees' retirement system may have such service credits and accumulated contributions under said employees' retirement system transferred to the Teachers Retirement System of Georgia. Any member who elects to transfer such service credits and accumulated contributions shall notify the board of trustees of this retirement system in writing of the member's election to do so. Such transferred service credits shall not be used in determining the qualifications of a member for benefits other than vested rights, disability, death, or normal service retirement. Such member shall be required to make additional contributions to this retirement system so that the member's annuity account balance will be the same as though the member had been a member of this retirement system during the period of time for which service credits are transferred from the Employees' Retirement System of Georgia to this retirement system or, in the absence of such payment, the board of trustees shall adjust the member's credits in proportion to the accumulated contributions transferred from the Employees' Retirement System of Georgia to this retirement system. The Employees' Retirement System of Georgia shall pay an employer contribution plus regular interest to the Teachers Retirement System of Georgia for each member transferring service credits and accumulated contributions to the Teachers Retirement System of Georgia authorized in this Code section. The amount of such employer contributions shall be 6 percent of the reported compensation of the member while a member of said employees' retirement system. The employees' retirement system shall pay an additional amount of retirement contributions pursuant to Code Section 47-2-51 for an employ-

ees' retirement system member covered by Code Section 47-2-334. This payment shall be placed in the pension accumulation fund and will adjust the amount of employee retirement contributions required for service credit.

(b)(1) Any provision of this title to the contrary notwithstanding, any vested member of the Employees' Retirement System of Georgia who becomes a teacher may, at his or her option, elect to remain a member of the Employees' Retirement System of Georgia.

(2) If a person subject to this subsection elects to remain a member of the Employees' Retirement System of Georgia, the employer and teacher shall make all contributions to such retirement system and perform such other acts as are required by law or regulation.

(3) If a person subject to this subsection does not elect to remain a member of the Employees' Retirement System of Georgia, he or she shall become a member of this retirement system subject to all provisions of this chapter.

(4) This subsection shall be applicable to each person who was a member of this retirement system on January 1, 1997, and to all persons who become a member on or after such date. Any person subject to this subsection who became a member of the Employees' Retirement System of Georgia between January 1, 1997, and June 30, 1998, who elects to remain a member of this retirement system shall be governed by the provisions of subsection (a) of this Code section relating to the transfer of service credits and accumulated contributions.

(5) Any person eligible to make the election provided for in this subsection shall do so in writing to the board of trustees not later than September 30, 2000, or within 60 days after the person became a teacher, whichever date is later. Once made, the election shall be irrevocable.

(6) The provisions of this subsection shall not become a part of the employment contract and shall be subject to subsequent legislation; provided, however, that no person who has made the election provided by this subsection shall be affected by any subsequent legislation. (Ga. L. 1962, p. 723, § 16; Ga. L. 1966, p. 513, § 4; Ga. L. 1968, p. 1405, § 2; Ga. L. 1986, p. 1543, § 4; Ga. L. 1992, p. 1105, § 1; Ga. L. 1998, p. 775, § 2; Ga. L. 2000, p. 1273, § 2; Ga. L. 2001, p. 21, § 1.)

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Transferability of forfeited leave. — Forfeited leave cannot be established as creditable service under the provisions of O.C.G.A. § 47-2-91 prior to retirement and

therefore, it is not transferable to the Teachers Retirement System pursuant to O.C.G.A. § 47-3-81. 1985 Op. Att'y Gen. No. 85-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1174, 1183 et seq., 1226 et seq., 1231 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 311 et seq. 78 C.J.S., Schools and School Districts, § 481 et seq.

47-3-82. Reestablishment of creditable service by persons who have withdrawn their contributions.

(a) Subject to the additional requirements of subsections (b) and (c) of this Code section, a member who has withdrawn accumulated contributions from the retirement system pursuant to the provisions of Code Section 47-3-128 may reestablish the creditable service represented by the withdrawn contributions by paying to the board of trustees a sum equal to the amount of accumulated contributions which were withdrawn plus applicable accrued regular interest for each year or portion thereof which elapsed from the time of such withdrawal of contributions to the date of such payment.

(b) A member must complete a minimum number of years of service as a contributing member of the retirement system before becoming eligible to reestablish creditable service under subsection (a) of this Code section as follows:

(1) When accumulated contributions have been withdrawn not more than three times, the minimum shall be three years;

(2) When accumulated contributions have been withdrawn not more than four times, the minimum shall be five years; and

(3) When accumulated contributions have been withdrawn five or more times, the minimum shall be ten years.

(c) The regular interest rate provided for in subsection (a) of this Code section shall be increased 2 percent for each withdrawal of accumulated contributions exceeding three such withdrawals.

(d) A member may establish a portion of the creditable service represented by all of the member's withdrawn contributions by paying to the board of trustees a pro rata amount based upon the total accumulated contributions withdrawn plus interest in accordance with rules adopted by the board of trustees and subject to the provisions of subsections (a), (b), and (c) of this Code section. (Ga. L. 1980, p. 828, § 1; Ga. L. 1988, p. 346, § 1; Ga. L. 1990, p. 529, § 1; Ga. L. 1992, p. 1347, § 1.)

47-3-83. Service credit for active duty service in the armed forces of the United States; limitations on credit for such service if used to obtain other state or federal retirement benefits.

(a) Any person who was on active duty in the armed forces of the United States during World War I, World War II, the Korean War, or any period of

national emergency may receive up to five years of service credit for such military service under the following conditions:

(1) Prior service credit shall be awarded at no cost to the member for any period of military service prior to January 1, 1945;

(2) Membership service credit shall be awarded for any period of active military service performed after January 1, 1945, upon payment by the member of the regular employee contribution of:

(A) Five percent on the earnable compensation last paid to him as a teacher before entering military service or if he was not a teacher prior to entering military service 5 percent on the earnable compensation first paid to him as a teacher after returning from military service, whichever the case may be, plus applicable accrued regular interest on such employee contributions, compounded annually to date of payment, for any period of active military service between January 1, 1945, and July 1, 1961; and

(B) Six percent on the earnable compensation last paid to him as a teacher before entering military service or if he was not a teacher prior to entering military service 6 percent on the earnable compensation first paid to him as a teacher after returning from military service, whichever the case may be, plus applicable accrued regular interest on such employee contributions, compounded annually to date of payment, for any period of active military service subsequent to July 1, 1961.

(b) Any member who on July 1, 1978, has 20 or more years of membership service and who was on active duty in the armed forces of the United States during the period beginning on July 1, 1946, and ending on December 31, 1948, may receive military service credit for such period of time, provided that such member shall pay the regular employee and employer contributions which would have been paid on the compensation first paid to him as a teacher following the completion of such military service during such period, plus applicable accrued regular interest on such employee and employer contributions, compounded annually to date of payment; provided, further, that no such member shall receive more than five years of service credit for all military service; provided, further, that no member shall claim service credit under this subsection for military service during such period for which credit has previously been received.

(c) No active military service in the armed forces of the United States shall be deemed as creditable under the retirement system if such service has or will be used in the determination of any member's eligibility for retirement benefits or allowances from any other state or federal retirement program, excluding social security and the United States civil service system.

(d) In addition to creditable service authorized by subsections (a) and (b) of this Code section, but subject to the limitations of subsection (c) of

this Code section, a member who was on active duty in the armed forces of the United States during any period when a military draft was in effect and who was honorably discharged from military service may receive credit for such military service under the following conditions:

(1) The total amount of creditable service for military service which may be received under all provisions of this Code section may not exceed five years;

(2) The member shall pay to the board of trustees the regular employee and employer contributions which would have been paid during the period for which creditable service is claimed based on the compensation of the member upon first becoming a teacher after the completion of the military service plus applicable accrued regular interest on such employee and employer contributions compounded annually to date of payment; and

(3) No creditable service for military service may be obtained pursuant to the authority of this subsection if creditable service for the same military service has been or may be obtained under subsection (a) or (b) of this Code section.

(e) Anything in this chapter to the contrary notwithstanding, an employer contribution shall be made to the account of any member who is required to perform "ordered military duty" in the armed forces as defined in Code Section 38-2-279. The contribution shall be made by the employer for the period during which the member served in the armed forces of the United States and in the same account as would have been contributed by the employer had the member remained in employment under the retirement system without change in compensation during that period. For the purposes of this subsection, the word "employer" means the State of Georgia. (Ga. L. 1962, p. 723, § 14; Ga. L. 1965, p. 438, § 3; Ga. L. 1974, p. 1198, §§ 1, 2; Ga. L. 1977, p. 825, § 4; Ga. L. 1978, p. 1685, § 1; Ga. L. 1986, p. 1552, § 1; Ga. L. 1991, p. 996, § 1.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

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Member must have served in stated war or national emergency. — Member claiming service under subsection (a) of this statute must have served in stated war or national emergency. 1974 Op. Att'y Gen. No. 74-8 (see O.C.G.A. § 47-3-83).

Payment of employee contribution for service credit cannot be extended to include the member's beneficiary. 1968 Op. Att'y Gen. No. 68-40.

Person eligible receives no more than five

years credit. — Person eligible for military service credit can receive no more than five years of credit; to hold otherwise would violate the overall intent of this statute. 1974 Op. Att'y Gen. No. 74-104 (see O.C.G.A. § 47-3-83).

Service time to establish credit under both state and federal retirement systems. — Members of the Teachers Retirement System who performed active duty military service while serving in a reserve component may

establish service credit within the system, and members may do so even though that service time has also been used to establish service credit for a military retirement. 2008 Op. Att’y Gen. No. 2008-3.

47-3-84. Credit for service rendered by members who have breaks in membership; payments required to obtain such credit.

Any provision of this chapter to the contrary notwithstanding, any teacher shall be entitled to have all teaching service included in computing creditable service, notwithstanding breaks in membership of more than four years, provided that such teacher pays into the retirement system an amount equal to the minimum required for continuous members, plus regular interest that would have accrued on such contributions during periods of nonmembership. No member shall receive credit for teaching service if contributions were not made during the teaching service or have not later been contributed with interest that would have accrued on such contributions, provided that after three years’ membership service a member may reestablish previous credits by paying into the retirement system, prior to retirement, contributions equal to 10 percent of such compensation as he received during those years and for which he desires to establish previous credit, plus regular interest that would have accrued on such contributions. (Ga. L. 1957, p. 462, § 1; Ga. L. 1959, p. 319, § 2; Ga. L. 1966, p. 564, § 1; Ga. L. 1972, p. 414, § 1; Ga. L. 1979, p. 1007, § 2.)

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Principal purpose of this statute appears to be to enable the teacher who is again employed in a position under the retirement system following a break in service to regain credit for the teacher’s prior teaching service which was thus lost. 1957 Op. Att’y Gen. p. 230 (see O.C.G.A. § 47-3-84).

Workers’ compensation benefits cannot be included as earnable compensation for purpose of computing retirement benefits. 1980 Op. Att’y Gen. No. 80-134.

Previous service credit for employees of Georgia Association of Educators. — An employee of the Georgia Association of Educators (GAE) who is still a member of the Teachers Retirement System can establish credit for prior teaching service, but cannot establish credit for service as a GAE employee rendered prior to a request for membership made under O.C.G.A. § 47-3-1 (28). 1986 Op. Att’y Gen. No. 86-42.

47-3-84.1. Certain former members of the system who have not withdrawn contributions.

(a) Any former member of the retirement system who is not a beneficiary of the retirement system on July 1, 1986, who completed at least ten consecutive years of membership service during a period beginning not earlier than January 1, 1954, and ending not later than January 1, 1966, who has not withdrawn from the retirement system employee contributions which were made during such consecutive years of membership service, and who is at least 60 years of age as of July 1, 1986, shall have the right to:

(1) Obtain credit for service rendered at any time prior to January 1, 1954, as a teacher in Georgia public school systems upon providing verification of such teaching service to the board of trustees and upon paying to the board of trustees employee and employer contributions plus applicable accrued regular interest for such prior teaching service based on compensation actually received for such prior teaching service;

(2) Obtain credit for up to five years of service rendered at any time prior to January 1, 1945, for teaching in public school systems of other states upon providing verification of such out-of-state teaching service to the board of trustees and upon paying to the board of trustees employee and employer contributions plus applicable accrued regular interest for such service based on compensation actually received for such out-of-state teaching service, provided such former member is not entitled to receive any pension or annuity from any other state or from any political subdivision of this or any other state based on such service; and

(3) Apply to the board of trustees at any time between July 1, 1986, and January 1, 1987, to obtain any portion or all eligible creditable service provided for by paragraph (1) or (2) or paragraphs (1) and (2) of this subsection and to receive a retirement benefit based on the combined total of creditable service so obtained plus the years of membership service for which employee contributions have not been withdrawn; or

(4) Apply to the board of trustees at any time between July 1, 1986, and January 1, 1987, to reestablish active membership in the retirement system only for the purpose of retiring on the basis of membership service for which employee contributions have not been withdrawn without the necessity of the payment of any additional employee contributions.

(b) The board of trustees shall begin making retirement benefit payments to a former member of the retirement system who qualifies therefor pursuant to subsection (a) of this Code section on the first day of the month within 30 days after such former member so qualifies. (Code 1981, § 47-3-84.1, enacted by Ga. L. 1986, p. 1531, § 1.)

47-3-84.2. Credit for service by members described in subparagraphs (N) and (P) of paragraph (28) of Code Section 47-3-1.

(a) Any member described in subparagraph (N) or (P) of paragraph (28) of Code Section 47-3-1 who is allowed to continue membership in the retirement system after June 30, 1984, under the provisions of the last undesignated paragraph of Code Section 47-3-1 shall be eligible to obtain creditable service under this chapter for service rendered prior to July 1, 1984, in a position described in said subparagraph (N) or (P) of paragraph (28) of Code Section 47-3-1, provided creditable service has not been

obtained by the member for the same period of time under any other provision of this chapter and, provided, further, that payment is made for such creditable service as required in subsection (b) of this Code section.

(b) In order to obtain creditable service authorized in subsection (a) of this Code section:

(1) The member applying for such creditable service shall pay to the board of trustees the employee contributions that would have been paid into the retirement system during the period of time for which creditable service is obtained as if the person had been a member of the retirement system during such period of time, plus regular interest that would have accrued on such contributions; and

(2) The Georgia Association of Educators, the Georgia High School Association, the Georgia School Boards Association, or the Georgia Vocational Association which employed the member during the period of time for which application is made for creditable service shall pay to the board of trustees an amount which when added to the amount paid to the board under paragraph (1) of this subsection shall be sufficient to pay the full actuarial cost of granting the creditable service claimed by the member applying therefor.

(c) The board of trustees may require such documentation as may be necessary to verify any service and the compensation therefor that may be claimed as creditable service under this Code section. Upon application for creditable service under this Code section and the provision of such documentation as the board of trustees may require, the board shall certify to the applying member and to the appropriate association the amount of the payments required under subsection (b) of this Code section. (Code 1981, § 47-3-84.2, enacted by Ga. L. 1990, p. 685, § 2; Ga. L. 1991, p. 130, § 1.)

47-3-85. Credit for service by former member of Employees' Retirement System of Georgia who withdrew contributions; credit for service before that retirement system established.

(a) Subject to the additional requirements of subsections (b) and (c) of this Code section, any current member who was previously a member of the Employees' Retirement System of Georgia and who withdrew employee contributions from that system may reestablish the creditable service represented by the withdrawn contributions by paying to the board of trustees the minimum employee contributions required for continuous members of this retirement system, plus regular interest that would have accrued on such amount from the date that contributions to the Employees' Retirement System of Georgia stopped being credited with interest. Upon receipt of notice from the Teachers Retirement System of Georgia that a member has repaid to it contributions previously withdrawn from the

Employees' Retirement System of Georgia, the Employees' Retirement System of Georgia shall pay an employer contribution plus regular interest to the Teachers Retirement System of Georgia. The amount of such employer contributions shall be 6 percent of the reported compensation of the member while a member of said employees' retirement system. The employees' retirement system shall pay an additional amount of retirement contributions pursuant to Code Section 47-2-51 for an employees' retirement system member covered by Code Section 47-2-334. This payment shall be placed in the pension accumulation fund and will adjust the amount of employee retirement contributions required for service credit.

(b) A member must complete a minimum number of years of service as a contributing member of the retirement system before becoming eligible to reestablish creditable service under subsection (a) of this Code section as follows:

(1) When accumulated contributions have been withdrawn not more than three times, the minimum shall be three years;

(2) When accumulated contributions have been withdrawn not more than four times, the minimum shall be five years; and

(3) When accumulated contributions have been withdrawn five or more times, the minimum shall be ten years.

(c) The regular interest rate provided for in subsection (a) of this Code section shall be increased 2 percent for each withdrawal of accumulated contributions exceeding three such withdrawals.

(d) A member may establish a portion of the creditable service represented by all of the member's withdrawn contributions by paying to the board of trustees a pro rata amount based upon the total accumulated contributions withdrawn plus interest in accordance with rules adopted by the board of trustees and subject to the provisions of subsections (a), (b), and (c) of this Code section.

(e) Any current member who previously rendered service which would currently be covered by the Employees' Retirement System of Georgia, but which was rendered prior to the establishment of the Employees' Retirement System of Georgia, may obtain credit for such service, provided that he renders at least five years of service as a contributing member of this retirement system; provided, further, that for all such service on and after January 1, 1945, such member pays into this retirement system the employee and employer contributions which would have been paid into this retirement system had he rendered such service as a member of this retirement system, plus the applicable rate of interest in accordance with regulations adopted by the board of trustees. (Ga. L. 1968, p. 1405, § 1; Ga. L. 1975, p. 1574, § 1; Ga. L. 1975, p. 1637, § 2; Ga. L. 1979, p. 930, § 1; Ga. L. 1979, p. 1007, § 3; Ga. L. 1982, p. 3, § 47; Ga. L. 1986, p. 1258, § 1; Ga. L. 1992, p. 1105, § 2; Ga. L. 1996, p. 723, § 1.)

47-3-86. Issuance of a prior service certificate; evidentiary effect of such certificate; credit for prior service rendered by members who previously elected nonmembership.

(a) Under such rules and regulations as the board of trustees shall adopt, each member who (1) was a teacher at any time during the calendar year 1943, or (2) has taught for at least two years between January 1, 1940, and January 1, 1943, or at least two years from January 1, 1945, to January 1, 1948, or (3) has taught at least one year between January 1, 1945, and January 1, 1948, and has 15 years of service previous to January 1, 1948, shall file a detailed statement of all services rendered by him as a teacher prior to January 1, 1945, for which he claims credit. If any person who would otherwise have qualified under this subsection is on leave in the armed forces of the United States, he shall have until six months after termination of his military service to file a statement of such services.

(b) Upon verification of such statement of service, the board of trustees shall issue to each such member a prior service certificate certifying to the service prior to January 1, 1945, with which he is credited on the basis of his statement of service and the amount of his prior service accumulations. So long as membership continues, a prior service certificate shall be final and conclusive evidence of such service for retirement purposes, provided that a member may request the board of trustees to modify or correct his prior service certificate within one year of the date of issuance or any previous modification or correction. When membership ceases, such prior service certificate shall become void.

(c) Any member who is unable to qualify for prior service under subsection (a) of this Code section may qualify for prior service he has rendered in the public schools or University System of Georgia after he has been a contributing member for five years and upon compliance with other requirements of this chapter.

(d) Any teacher who previously elected not to become a member and signed a nonmembership card to that effect, but who desires to become a member, may receive credit for prior service upon making a contribution equal to 5 percent of all earnable compensation between January 1, 1945, and July 1, 1961, and 6 percent of all earnable compensation after July 1, 1961, plus accrued regular interest on such amounts compounded annually to the date on which the contribution is paid. (Ga. L. 1943, p. 640, § 4; Ga. L. 1947, p. 872, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 390, § 1; Ga. L. 1960, p. 1116, § 2; Ga. L. 1961, p. 388, § 1; Ga. L. 1962, p. 723, § 12; Ga. L. 1963, p. 542, § 1; Ga. L. 1965, p. 438, § 2; Ga. L. 1977, p. 825, § 2; Ga. L. 1982, p. 3, § 47.)

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Prior service certificate cannot be issued for service in 1944. 1948-49 Op. Att'y Gen. p. 136 (rendered under Ga. L. 1943, p. 640, § 4, as amended, prior to amendment by Ga. L. 1962, p. 723, § 12).

Limit time to qualify or file for prior service. — Board of trustees is authorized to enact such rules and regulations as the board deems fit limiting the time within which a member may qualify as the recipient of prior service credit, and limiting the time in which a qualified member may file the detailed statement of the member's prior service, and the regulatory power granted the board of trustees is a plenary grant and is more than sufficient to authorize regulations. 1948-49 Op. Att'y Gen. p. 134.

Teachers who are veterans have period of six months after discharge in which to qualify under the statutory provisions by accomplishing sufficient teaching services. 1948-49 Op. Att'y Gen. p. 134.

No limit as to when teacher discharged. — Statute does not state any limitation as to when teacher must be discharged from the armed services to be eligible for the six months' additional period for qualification; thus it is not clear whether a teacher must be discharged during a national emergency or for some years thereafter to obtain the extra period; further, this statute is silent as to whether the six months' period of service shall be made retroactive to qualify a teacher within one of the several periods set out. 1948-49 Op. Att'y Gen. p. 134 (see O.C.G.A. § 47-3-86).

Prior service certificate conclusive for active contributing and retired member. — Word "membership," as used in this statute,

viz., "so long as membership continues a prior service certificate shall be final and conclusive ... when membership ceases, such prior service certificate shall become void," includes and means both an active contributing member and a retired member receiving benefits, and a retired member has "membership" as that word is used in this statute. 1950-51 Op. Att'y Gen. p. 56 (see O.C.G.A. § 47-3-86).

Teacher not allowed pension based on local retirement fund years. — If a teacher has 13 years of accrued creditable service under the retirement system acquired before July 1, 1943 (now January 1, 1945), immediately prior to joining a local system, and that teacher applies ten of those years toward a local retirement fund, that retired teacher would have to serve five years of membership service under the retirement system at some time to be eligible for the normal retirement benefits payable on the three years not applied to the local system, or alternatively, the minimum "floor" benefit on those three years, whichever is greater; also, if this teacher acquires the necessary five years of membership service in order to qualify for the creditation of prior service as a "regular member" of the retirement system, the teacher would be entitled to a benefit based on what would have been the annuity contributions during the ten transferred years had that teacher actually been paying contributions during that period; this teacher, however, would not be entitled to the pension amounts on these ten years applied to the local fund because those amounts must be paid to the local fund. 1950-51 Op. Att'y Gen. No. 75-113.

47-3-87. Accumulated contributions for prior service; local retirement fund service included; determination of earnable compensation received during prior service.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 46, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1943, p. 640, § 4; Ga. L. 1962, p. 723, § 13.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and

inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any

person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, op-

tion, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-3-87.1. Credit for service rendered in independent school system prior to, but not later than, June 30, 1979.

(a) As used in this Code section, the terms “independent school system” and “local retirement fund” shall have the same meaning as defined by paragraphs (1) and (2) of subsection (a) of Code Section 47-3-66.

(b) Any active member who was employed by an independent school system prior to, but not later than, June 30, 1979, and who was, while so employed, a member of a local retirement fund of such independent school system and had a vested right to benefits thereunder and who has not withdrawn employee contributions from the local retirement system shall receive creditable service under this chapter equivalent to the creditable service the member had under said local retirement fund subject to the following conditions:

(1) The fiscal authority or other governing body, by whatever name designated, of the local retirement fund of the independent school system shall pay to the board of trustees the total amount of employee contributions credited to the member under the local retirement fund plus applicable accrued regular interest, as determined by the board of trustees, which would have accumulated on such contributions. Such payment must be paid to the board of trustees, in a manner prescribed by the board, by not later than January 1, 1983, or by the date of retirement, if the member retires prior to January 1, 1983;

(2) The member shall pay to the board of trustees the amount of contributions which would have been paid by the member to the Teachers Retirement System of Georgia if the member had been a member of the Teachers Retirement System of Georgia for the period of creditable service the member had under the local retirement fund plus applicable accrued regular interest, as determined by the board of trustees, which would have accumulated on such contributions, but the amount otherwise payable hereunder shall be reduced by the amount paid to the board of trustees under paragraph (1) of this subsection. Such payment must be made to the board of trustees, in a manner prescribed by the board, by not later than January 1, 1983, or by the date of retirement if the member retires prior to January 1, 1983. Creditable service under this subsection shall not be granted to the member until the payment required by this paragraph has been made to the board of trustees;

(3) The fiscal authority or other governing body, by whatever name designated, of the local retirement fund of the independent school

system shall pay to the board of trustees the amount of employer contributions for such creditable service, which would have been paid to the Teachers Retirement System of Georgia had the teacher been a member of the Teachers Retirement System of Georgia at the time the service was rendered, plus applicable accrued regular interest thereon, as determined by the board of trustees;

(4) No creditable service under this subsection may be obtained for creditable service under a local retirement fund unless the member has forfeited any right to receive a retirement benefit under the local retirement fund;

(5) No creditable service under this subsection may be obtained if such creditable service would not be allowable under other provisions of this chapter; and

(6) Subsections (i), (j), and (k) of Code Section 47-3-66 shall apply to payments required by this subsection.

(c) Any active member who was employed by an independent school system prior to, but not later than, June 30, 1979, and who was, while so employed, a member of a local retirement fund of such independent school system and had no vested right to benefits thereunder and who has withdrawn employee contributions from the local retirement fund and who had 17 years or more of creditable service with that local retirement fund shall receive creditable service under this chapter equivalent to the creditable service the member had under said local retirement fund upon the payment by the member to the board of trustees of the amount of contributions which would have been paid by the member to the Teachers Retirement System of Georgia if the member had been a member of the Teachers Retirement System of Georgia for the period of creditable service the member had under the local retirement fund, plus applicable accrued regular interest, as determined by the board of trustees, which would have accumulated on such contributions. Such payment must be paid to the board of trustees in a manner prescribed by the board by not later than January 1, 1983, or by the date of retirement if the member retires prior to January 1, 1983. Creditable service under this subsection shall not be granted until the payment required by this subsection has been made to the board of trustees. Paragraphs (4) and (5) of subsection (b) of this Code section shall apply to creditable service obtained under this subsection. (Ga. L. 1982, p. 1192, § 1; Code 1981, § 47-3-87.1, enacted by Ga. L. 1982, p. 1192, § 2; Ga. L. 1985, p. 209, § 1; Ga. L. 2000, p. 131, § 1.)

47-3-88. Credit for service rendered to a local school system by persons who became members on or after April 1, 1966; payments required in order to obtain such credit.

Any other provision of this or any other law to the contrary notwithstanding, in order for a teacher who becomes a member of the retirement system

on or after April 1, 1966, to receive full creditable service for service rendered while a member of a local school system and before he became a member of the retirement system either such teacher, or the local board of education for which such service was rendered, or the local board of education by which the member is currently employed must pay the employee and employer contributions, plus regular interest. The board of trustees shall determine the amount to be paid, provided that in no case shall a member pay more than the total member and employer contributions and regular interest in effect at the time such service was rendered. (Ga. L. 1975, p. 1637, § 1.)

47-3-89. Credit for service rendered in governmentally supported or operated schools other than public schools in Georgia; payments required to obtain credit for such service.

(a) Any member of the retirement system shall be entitled to receive up to ten years of creditable service for teaching service in school systems of other states in the United States, state supported independent school systems of the United States, schools operated by the Bureau of Indian Affairs of the United States Department of the Interior, public school systems of the Virgin Islands, Puerto Rico, Guam, and the District of Columbia, or American dependents' schools, provided that the member has first established five years of membership service credit in the public schools of Georgia or the University System of Georgia; provided, further, that such service credit shall be allowed on the basis of one year of credit for such service for each additional year of membership service in the public schools of Georgia or the University System of Georgia. A teacher desiring to establish credit for such service must pay employee and employer contributions which would have been paid to the retirement system on a salary comparable to his salary for such service, plus the applicable rate of interest, in accordance with regulations adopted by the board of trustees. Such contributions must be paid prior to retirement under this retirement system. For such service rendered prior to January 1, 1945, the rate of employee contributions shall be 5 percent and the rate of employer contributions shall be 6.83 percent. The rate of interest on such contributions shall be the applicable regular interest. No member who receives or who is entitled to receive a pension or annuity from any other state, county, or municipality, or federal retirement program excluding social security, shall receive creditable service for such service. The board of trustees shall promulgate rules and regulations to carry out this Code section.

(b) Any provisions of this Code section to the contrary notwithstanding, teachers who became members of the retirement system prior to April 1, 1966, shall be permitted to establish credit for a maximum of ten years of service in school systems of other states in the United States that permit retirement credit for teaching service rendered in Georgia public schools,

by paying 8 percent of such out-of-state compensation that they received, plus applicable accumulated interest, in accordance with regulations adopted by the board of trustees. Such members may establish credit for one year of out-of-state service for each year of membership service in the public schools of Georgia or the University System of Georgia rendered after the first five years of membership service. (Ga. L. 1957, p. 508, § 1; Ga. L. 1960, p. 1116, § 1; Ga. L. 1966, p. 562, § 1; Ga. L. 1968, p. 543, § 1; Ga. L. 1969, p. 582, § 1; Ga. L. 1971, p. 627, § 1; Ga. L. 1972, p. 909, § 3; Ga. L. 1977, p. 825, § 3; Ga. L. 1982, p. 1095, §§ 1, 2; Ga. L. 1984, p. 998, § 1; Ga. L. 2000, p. 131, § 1.)

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Out-of-state service may establish service by paying into in-state system. — Member of the retirement system who is entitled to retirement benefits for out-of-state service pursuant to annuity contracts with an annuity association and a retirement equities fund, but who is not receiving or eligible to receive a pension or annuity from any other state, county, or municipality, can establish the member's out-of-state service with the retirement system, subject to the provisions otherwise specified in this statute. The teacher has to pay the retirement system for the out-of-state service which the teacher seeks to establish just as if this service had been rendered in Georgia at a comparable salary. 1975 Op. Att'y Gen. No. 75-26 (see O.C.G.A. § 47-3-89).

Member of system prior to April 1, 1966, establishes service by paying system. — Teacher who became a member of the retirement system prior to April 1, 1966, and who is otherwise entitled to credit for

out-of-state teaching service, may establish such credit by paying to the system 8 percent of the out-of-state compensation received, plus accumulated interest. The result is the same even though such a teacher retires, begins receiving benefits, and again becomes a member of the retirement system after April 1, 1966, because all that is required is that the teacher, at some time, became a member of the system prior to April 1, 1966. 1975 Op. Att'y Gen. No. 75-25.

Established out-of-state credit may, upon reemployment, reestablish credit. — Teachers who establish out-of-state service credit and subsequently withdraw from the retirement system may, upon their reemployment as teachers in Georgia, reestablish their service credit by paying into the system the amount of the withdrawn contributions, plus interest. 1973 Op. Att'y Gen. No. 73-45.

Teacher has no vested right to an earlier interest rate unless it was exercised. 1971 Op. Att'y Gen. No. U71-142.

47-3-90. Absence from employment because of pregnancy.

(a) A member who, prior to March 5, 1976, was employed by a public school system of this state in a capacity specified by subsection (a) of Code Section 20-2-850 may, subject to the limitations of subsection (b) and the requirements of subsection (c) of this Code section, obtain creditable service under the retirement system for any period prior to March 5, 1976, during which the member was absent from employment because of pregnancy.

(b) No creditable service shall be granted for any part of a period of absence from employment because of pregnancy when the member was on sick leave. The maximum amount of creditable service which may be obtained by a member for any one pregnancy shall be one and one-half

months and the maximum amount of creditable service which may be obtained by a member for all pregnancies shall be six months.

(c) A member who desires to establish creditable service under this Code section must:

(1) Submit to the board satisfactory evidence of the period of absence from employment which qualifies for creditable service under this Code section; and

(2) Pay to the board an amount determined by the board to be sufficient to cover the full actuarial cost of granting the creditable service claimed by the member. (Code 1981, § 47-3-90, enacted by Ga. L. 1986, p. 1536, § 1; Ga. L. 1988, p. 697, § 1; Ga. L. 1990, p. 1796, § 1; Ga. L. 1992, p. 1610, § 1; Ga. L. 1994, p. 726, § 1; Ga. L. 1996, p. 366, § 1.)

Editor's notes. — Ga. L. 1988, p. 697, § 1, which would have amended paragraph (c)(2) of this Code section, was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and was repealed on July 1, 1988. See the state auditor's report at Ga. L. 1988, p. CCLXXXIV. This Act was subsequently repealed by Ga. L. 1989, p. 251, § 1, effective March 30, 1989.

Ga. L. 1990, p. 1796, § 1, which would have amended subsection (a) and paragraph (c)(2) of this Code section, was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and was repealed on July 1, 1990. See the state auditor's report at Ga. L. 1990, p. CCCV.

Ga. L. 1992, p. 1610, § 1, which would have amended subsections (a) and (c) of

this Code section, was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and was repealed on July 1, 1992. See the state auditor's report at Ga. L. 1992, p. CDV.

Ga. L. 1994, p. 726, § 1, which would have amended subsections (a) and (c) of this Code section, was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and was repealed on July 1, 1994. See the state auditor's report at Ga. L. 1994, p. CCCLXXIX.

Ga. L. 1996, p. 366, § 1, which would have amended subsections (a) and (c) of this Code section, was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and was repealed on July 1, 1996. See the state auditor's report at Ga. L. 1996, p. CCCLI.

47-3-91. Credit for service for visiting scholars.

(a) As used in this Code section, the term "public college or university" means a college or university or other educational institution which is operated by or is under the control and management of a government or an agency or political subdivision of a government and which depends on government funds as a primary source of financial support.

(b) Any member who was or is granted a leave of absence from a unit of the University System of Georgia to accept appointment as a visiting scholar to give lectures or teach at a public college or university located inside or outside the United States shall be entitled to obtain creditable service under this chapter for the period of time spent as a visiting scholar, subject to the provisions of subsection (c) of this Code section.

(c) Any creditable service obtained pursuant to the authority of this Code section shall be subject to the following conditions and requirements:

(1) No more than two years of creditable service may be obtained under this Code section;

(2) No member who receives or who is or will become entitled to receive any annuity or pension or retirement benefit from any other source, except social security, shall be eligible to obtain creditable service under this Code section;

(3) No creditable service obtained under this Code section shall be applied to obtain creditable service under Code Section 47-3-89, and no person shall be entitled to obtain more than a total of ten years of creditable service pursuant to this Code section and Code Section 47-3-89; and

(4) The member must pay employer and employee contributions which would have been paid to the retirement system during the period of time claimed as creditable service based on the member's earnable compensation at the time of making application for creditable service plus regular interest thereon compounded annually from the time the service as a visiting scholar was rendered until the date of payment. (Code 1981, § 47-3-91, enacted by Ga. L. 1990, p. 506, § 1; Ga. L. 1991, p. 130, § 1.)

47-3-92. Absence from employment because of sick leave; creditable service.

(a) For purposes of this Code section, the maximum amount of sick leave which may be accumulated in one year shall be one and one-fourth days per month of actual service. In the event any employer authorizes sick leave in excess of such amount, any such leave used in any year shall be deducted from the maximum amount of leave authorized for that year by this Code section. Nothing in this Code section shall require any employer to grant any certain amount of sick leave.

(b) Accumulated days of sick leave accrued on, after, or before July 1, 1998, for which a member has not been paid shall constitute creditable service as provided in subsection (c) of this Code section. Such creditable service may be used to qualify for retirement but may not be used to qualify for vesting for benefits. Upon retirement of a member, the employer shall certify to the board of trustees the total amount of that member's sick leave based on leave records. It shall be the duty of each employer to maintain accurate records reflecting sick leave used and accumulated by each employee and to keep such records for at least 50 years.

(c)(1) A member shall be given such creditable service, not to exceed one month of creditable service for each 20 days of sick leave, in direct

relation to appropriations provided by the General Assembly to fund the provisions of this subsection together with any increase in employer contributions made pursuant to paragraph (2) of this subsection, provided that the member has a minimum of three months of such unused sick leave.

(2) In order to fund the provisions of this Code section in whole or in part, the board of trustees is authorized, but not required, to increase the amount of employer contribution in direct proportion to the amount shown in the appropriation Acts enacted for such purpose by the General Assembly.

(d) The board of trustees may adopt rules and regulations, not inconsistent with the provisions of this Code section, to aid in administering and carrying out the provisions of this Code section. The board of trustees is further authorized to adopt rules for awarding creditable service as provided in subsection (c) of this Code section in instances in which accurate records have not been kept based upon statistical experience in instances in which accurate records have been kept.

(e) The creditable service provided by this Code section shall be available only to persons who retire on or after July 1, 1998. (Code 1981, § 47-3-92, enacted by Ga. L. 1998, p. 870, § 1.)

Editor’s notes. — Ga. L. 1998, p. 870, § 2, provides that this Code section shall become effective incrementally as funding is ap- proved. Provision was made for concurrent funding at 50 percent.

OPINIONS OF THE ATTORNEY GENERAL

Credit of sick leave. — Only days of sick leave accrued while a member of the Teachers Retirement System may be credited to- ward retirement thereunder. 2000 Op. Att’y Gen. No. 2000-2.

47-3-93. Additional creditable service for members with at least 25 years of creditable service.

(a) Any member of this retirement system who has accrued at least 25 years of creditable service may obtain up to an additional three years of creditable service as provided in this Code section. In order to obtain such additional creditable service, the member must:

- (1) Make application to the board of trustees in such manner as the board deems appropriate; and
- (2) Pay to the board of trustees an amount determined by the board of trustees to be sufficient to cover the full actuarial cost of granting the creditable service as provided in this Code section.

Such application and payment must be made in conjunction with and simultaneously with the member’s application for retirement. If the appli-

cation for retirement is withdrawn or denied, the application to purchase creditable service shall be void.

(b) Upon receipt of an application for additional creditable service, the board of trustees shall certify to the applicant the amount of the payment required by paragraph (2) of subsection (a) of this Code section. (Code 1981, § 47-3-93, enacted by Ga. L. 2002, p. 526, § 1; Ga. L. 2010, p. 427, § 7/HB 969.)

The 2010 amendment, effective May 24, 2010, added the ending undesignated paragraph in subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 47-3-93, as enacted by Ga. L. 2002, p. 1218, § 1, was redesignated as Code Section 47-3-94.

Editor's notes. — Ga. L. 2002, p. 526, § 1, which enacted this Code section, purported to amend Article 5 of Chapter 32 of Title 47 but actually amended Article 5 of Chapter 3 of Title 47.

47-3-94. Credit for service while employed by nonprofit corporation under contract with state agency; requirements.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 47, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 47-3-94, enacted by Ga. L. 2002, p. 1218, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-3-95. Credit for service in private schools.

A member who has completed at least five consecutive years of membership service in the public schools of Georgia or the University System of Georgia immediately prior to applying may obtain up to ten years of creditable service for service as a teacher in a private elementary or secondary school or any private college or university located in the state accredited by the Southern Association of Colleges and Schools, the Georgia Accrediting Association, or a nationally recognized accrediting agency by the State Board of Education. Such service credit shall be allowed on the basis of one year of credit for such service for each additional year of membership service in the public schools of Georgia or the University System of Georgia. A member wishing to obtain such creditable service shall provide documentation and pay to the board of trustees such amount as determined by the actuary as necessary to grant such benefit without

creating any accrued actuarial liability as to this retirement system. (Code 1981, § 47-3-95, enacted by Ga. L. 2002, p. 1218, § 1.)

Code Commission notes. — Pursuant to § 1, was redesignated as Code Section 47-3-95, in 2002, Code Section 47-3-94, as enacted by Ga. L. 2002, p. 1218,

ARTICLE 6

RETIREMENT AND ELIGIBILITY FOR RETIREMENT ALLOWANCES

47-3-100. Service which is creditable toward a retirement allowance.

The retirement allowance of a member shall be based on the membership service rendered or established by him since he last became a member and, if he has a prior service certificate in full force and effect, the amount of the prior service so certified. (Ga. L. 1943, p. 640, § 4.)

47-3-101. Eligibility and application for retirement; retirement age; duration of benefits paid to a retired member; payment to maintain Teachers Retirement System.

(a) Any member in service may retire upon written application to the board of trustees, provided that the member at the time of retirement: (1) has attained the age of 60 years and has at least ten years of creditable service, or (2) has at least 25 years of creditable service. The effective date of retirement will be the first of the month in which the application is received by the board of trustees; except that no retirement application will be effective earlier than the first of the month following the final month of the applicant's employment. Applications for retirement will not be accepted more than 180 days in advance of the effective date of retirement. Each employer shall certify to the board of trustees the date on which the employee's employment is or will be severed and that no agreement exists to allow the employee to return to service, including service as or for an independent contractor. Any return to employment or rendering of any paid service, including service as or for an independent contractor, for any employer during the calendar month of the effective date of retirement shall render the severance invalid and nullify the application for retirement.

(b) For purposes of this chapter, normal retirement age shall be 60 years of age if the member has at least ten years of creditable service or the age of the member on the date he or she attains 30 years of creditable service, whichever event comes first; provided, however, that the provisions of this subsection shall be subject to change by future legislation in order to comply with federal regulations. Except as provided under Article 3 of Chapter 1 of this chapter, a member's right to his or her retirement allowance is nonforfeitable upon attainment of normal retirement age.

(c) The benefits payable under Code Section 47-3-120 and under Code Section 47-3-122 shall be payable to the retired member for the remainder of his lifetime and shall be known as the maximum plan. Upon the death of the retired member, all monthly benefits shall cease as of the end of the month in which the retired member died. If the total monthly benefits paid at the time of the retired member's death are less than his accumulated contributions at the time of his retirement, the difference between the benefits paid and such accumulated contributions shall be refunded to the person who has been designated in writing by the retired member or to the retired member's estate, if no such person has been designated or if such designated person has predeceased the retired member. This subsection shall not apply when an optional allowance has been selected by the member under Code Section 47-3-121.

(d) The board of trustees is authorized to provide by rule or regulation for the payment of benefits to members or beneficiaries of the retirement system at a time and under circumstances not provided for in this chapter to the extent that such payment is required to maintain the Teachers Retirement System of Georgia as a "qualified retirement plan" for the purposes of federal income tax laws. (Ga. L. 1943, p. 640, § 5; Ga. L. 1950, p. 32, § 1; Ga. L. 1950, p. 261, § 3; Ga. L. 1953, Jan.-Feb. Sess., p. 238, §§ 1, 1A; Ga. L. 1953, Nov.-Dec. Sess., p. 114, § 1; Ga. L. 1961, p. 392, § 1; Ga. L. 1965, p. 438, § 4; Ga. L. 1969, p. 388, § 1; Ga. L. 1972, p. 140, § 1; Ga. L. 1972, p. 896, § 2; Ga. L. 1974, p. 1023, § 2; Ga. L. 1974, p. 1141, § 1; Ga. L. 1975, p. 357, § 1; Ga. L. 1981, p. 1894, § 2; Ga. L. 1988, p. 343, § 1; Ga. L. 1990, p. 536, § 3; Ga. L. 1992, p. 2476, § 1; Ga. L. 1996, p. 927, § 1; Ga. L. 2010, p. 427, § 8/HB 969.)

The 2010 amendment, effective May 24, 2010, added the last two sentences in subsection (a) and substituted the present provi-

sions of subsection (b) for the former provisions which read: "Reserved."

JUDICIAL DECISIONS

Mandatory retirement age for all school personnel constitutional. — Placing school personnel whose primary work activities are of a physical nature (school bus drivers and cafeteria personnel) into the same classification with other school personnel whose work activities are primarily mental (school teachers) in order to create a local retirement system for school employees provides ample justification under equal protection concepts for the establishment of age 65 as a mandatory retirement age, albeit that some teachers who participate in the state-wide retirement system that excludes public school bus drivers and cafeteria personnel are not required to retire until age 70 or

thereafter. *Fulton County Sch. Dist. v. Sanders*, 242 Ga. 298, 248 S.E.2d 670 (1978).

Local school boards do not have right to promulgate retirement policy inconsistent from state policy. *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975).

Local school board may extend maximum retirement age. — State retirement system allows local school boards to extend maximum retirement age to 73, and this statute provides the only statutory basis for the admitted state-wide mandatory retirement age of 70. *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975) (see O.C.G.A. § 47-3-101).

Authority of local school boards to set individual retirement policies, see *Davis v.*

Griffin-Spalding County Bd. of Educ., 445 F. Supp. 1048 (N.D. Ga. 1975).

OPINIONS OF THE ATTORNEY GENERAL

Employee has contractual right to statutory retirement benefits. — Retirement statutes which are effective while a member of a retirement system is employed in a covered position form a part of the employment contract; the employee has a contractual right to the provided retirement benefits. 1980 Op. Att'y Gen. No. 80-22.

Service retirement application requirements. — Service retirement application must be made in writing and filed with the board of trustees before retirement benefits can be paid, and the effective date of retirement is to be the first day of the month in which the application is received by the board of trustees. 1975 Op. Att'y Gen. No. 75-1.

Effective date for service retirement applications. — Proper effective date for service retirement applications under the retirement system is the first of the month following the month in which the member's employment is terminated. 1975 Op. Att'y Gen. No. 75-8.

Document filed with executive secretary-treasurer considered filed with board. — Executive secretary-treasurer is the custodian of all documents required to be filed with, or retained by, the board of trustees; consequently, a document or other paper delivered for filing to the secretary-treasurer should be considered as filed with the board. 1975 Op. Att'y Gen. No. 75-1.

Benefits begin when teacher no longer employed. — Statute is designed to insure that retirement benefits do not begin until after the teacher is no longer employed and is, in fact, retired. 1975 Op. Att'y Gen. No. 75-8 (see O.C.G.A. § 47-3-101).

Board determinations must be made on a year-to-year basis. — County or independent board of education must find each year that the exceptional circumstances required by

this statute continue to exist, and it cannot find that the exceptional circumstances will continue to exist for three years or two years, and by this means meet the statutory requirements; the board must also find each year that it is necessary for the efficient operation of the board's school system that the teachers so continued be allowed to remain in service for the ensuing year. 1957 Op. Att'y Gen. p. 231 (see O.C.G.A. § 47-3-101).

Board of trustees responsible for enforcement. — Primary duty or responsibility for enforcing this statute rests upon board of trustees. 1948-49 Op. Att'y Gen. p. 532 (see O.C.G.A. § 47-3-101).

Board of trustees should not authorize retroactive payment of retirement benefits to members for months prior to the time service retirement applications were filed. 1975 Op. Att'y Gen. No. 75-1.

Intent to provide compulsory retirement for those at age 70. — General Assembly intended to provide for compulsory retirement of those persons reaching age of 70 with enumerated exceptions for certain continuances and, therefore, a person who has retired after age 70 would not be reemployed. 1948-49 Op. Att'y Gen. p. 532.

Elective officers not required to retire at age 70. — Elective officers under Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47), such as county school superintendents, are not required to retire upon attaining the age of 70. 1945-47 Op. Att'y Gen. p. 152.

School superintendents are not required to retire at age 70, but may hold their offices at least until successors are elected. 1985 Op. Att'y Gen. No. 85-58, affirming 1945-47 Op. Att'y Gen. p. 152.

Elected school superintendent who has attained the age of 70 can run for office and serve if elected. 1985 Op. Att'y Gen. No. 85-58.

RESEARCH REFERENCES

ALR. — Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.

47-3-102. Early retirement after 30 years' service; time for application; payment by member of actuarial cost.

(a) As used in this Code section, the term "school year" means a regular school year which begins during or near September of one year and ends during or near June of the following year.

(b) Notwithstanding the provisions of subsection (a) of Code Section 47-3-101, a member employed pursuant to a contract for each school year who will attain 30 years of creditable service by not later than the thirty-first day of December of the ensuing school year shall be eligible to retire effective on the first day of September nearest to the opening date of the ensuing school year on the basis of 30 years of creditable service, subject to the following conditions and requirements:

(1) The member must apply for early retirement pursuant to the authority of this Code section to the board of trustees, with a copy of such application being sent to the member's employer, by not later than the first day of May immediately preceding the opening date of the ensuing school year; and

(2) The member must pay to the board of trustees an amount determined by the board of trustees to be sufficient to cover the full actuarial cost of granting early retirement as provided in this Code section.

(c) The payment required by paragraph (2) of subsection (b) of this Code section shall be based on the compensation of the member which was in effect immediately preceding the opening date of the ensuing school year. For the purposes of determining average compensation in the computation of the retirement benefit under paragraph (2) of subsection (a) and subsection (d) of Code Section 47-3-120, the two consecutive years of creditable service shall include the period on which the payment required by paragraph (2) of subsection (b) of this Code section is based, and the compensation for such period shall be the same as the compensation used for the determination of such payment.

(d) The board of trustees shall certify to the applicant the amount of the payment required by paragraph (2) of subsection (b) of this Code section upon receiving an application for early retirement under this Code section. The payment so certified must be paid in full by the applicant to the board prior to the date of retirement under this Code section. (Code 1981, § 47-3-102, enacted by Ga. L. 1992, p. 1301, § 1.)

ARTICLE 7

RETIREMENT ALLOWANCES, DISABILITY BENEFITS, AND SPOUSES' BENEFITS

Administrative rules and regulations. — Administrative Rules, Official Compilation of the Rules and Regulations of the State of Georgia, Teachers Retirement System of Georgia, Chapter 513-5-1.

Law reviews. — For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Cited in Carr v. Sparks, 213 Ga. 606, 100 S.E.2d 583 (1957).

OPINIONS OF THE ATTORNEY GENERAL

Person teaching in academy for blind would be entitled to same treatment under Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47) as other teachers in the public school system. 1945-47 Op. Att'y Gen. p. 210.

When teacher retires, the teacher withdraws from the retirement system. 1954-56 Op. Att'y Gen. p. 615.

In five-year average salary, "year" may mean 12-months. — For the purposes of awarding a year of creditable service and determining a member's five-year average salary for computing benefits, the board of trustees may, by rule or regulation, employ the word "year" to mean a continuous

12-month period of time. 1976 Op. Att'y Gen. No. 76-84.

Teacher not allowed pension based on local retirement fund years. — If a teacher includes previous service in a system under the retirement system toward retirement under a local retirement fund, and the retirement system pays the pension amounts on that service to the local fund, the teacher cannot be allowed pension benefits from the retirement system based on those same years for which payments are being made to the local fund as this would clearly amount to a double payment. 1974 Op. Att'y Gen. No. 74-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1174 et seq., 1187 et seq., 1207 et seq., 1226 et seq., 1231.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 311 et seq. 70 C.J.S., Pensions, §§ 5, 10. 78 C.J.S., Schools and School Districts, § 481 et seq.

ALR. — Re-employment or reinstatement of public officer or employee as restoration of original status as regards incidental rights of privileges, 89 ALR 684.

47-3-120. Allowance on service retirement; minimum retirement allowance; reduced allowance; increase; computation of average compensation.

(a) Upon service retirement, a member shall receive an allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of retirement; and

(2) An annual pension which, together with the annuity set forth in paragraph (1) of this subsection, shall provide a total allowance equal to 2 percent of the member's average compensation over the two consecutive years of membership service producing the highest such average, multiplied by the number of the member's years of creditable service, not to exceed 40. The computation of average compensation for the purposes of this paragraph shall be subject to the requirements of subsection (d) of this Code section.

(a.1) The minimum allowance to be received by any member upon retirement shall not be less than \$17.00 per month for each year of creditable service, not to exceed 40 years of creditable service.

(b) In the case of any member who has less than 30 years of creditable service and if such member has not reached the age of 60 years upon retirement, the service allowance set forth in subsection (a) of this Code section shall be reduced by the lesser of one-twelfth of 7 percent for each month by which his age at the time of retirement is below 60 years or by 7 percent for each year or fraction of a year by which the member has less than 30 years of creditable service at the time of retirement. This reduction shall not apply in calculating the service allowance for disability retirement or death. Any member who retired with 30 or more years of creditable service and whose retirement benefits were reduced because such member retired at an age below the normal retirement age in effect at the time such member retired shall be entitled to an adjusted retirement benefit based upon a calculation made without the application of the age reduction factor. Any member retiring with less than 30 years of creditable service or who has not obtained the age of 60 at the time of retirement shall not become eligible for postretirement benefit adjustments as provided in Code Section 47-3-126 until such time as the member reaches the age of 60 or would have obtained 30 years of creditable service, whichever occurs earlier.

(c) To the extent that the necessary funds are appropriated for such purpose by the General Assembly, the board of trustees shall increase the retirement benefits of beneficiaries under this chapter when the retirement benefit formula provided for in paragraph (2) of subsection (a) of this Code section is changed to result in an increase in retirement benefits. The basis for such increase shall be the average percentage of increase in retirement benefits which results from the change in the retirement benefit formula. This subsection shall apply to all changes in the retirement benefit formula which have become effective since June 30, 1975, and those which may become effective at any time after June 30, 1977, for all beneficiaries under this chapter who retired on or before June 30, 1977. Any member who retires at any time after June 30, 1977, shall receive the benefit adjustment provided for in this subsection only for those changes in the retirement benefit formula which become effective after his retirement. If the General Assembly at any time appropriates some but not all of the funds

necessary to fund the benefit adjustments provided for in this subsection, then the benefit adjustment otherwise payable under this subsection shall be reduced pro rata by the board of trustees in accordance with the funds actually appropriated by the General Assembly for such purpose.

(d) No more than two increases in compensation granted during the two consecutive years on which average compensation is based under paragraph (2) of subsection (a) of this Code section shall be considered in the computation of such average compensation. For those members who are not employees of the Board of Regents of the University System of Georgia, that part of any such increase in compensation which exceeds a percentage equal to the average annual increase in compensation granted to classroom teachers by appropriations of the General Assembly, plus 2 1/2 percent of compensation received at the time the annual increase granted by appropriations becomes effective, shall not be considered in the computation of average compensation. For those members who are employees of the Board of Regents of the University System of Georgia, that part of any such increase in compensation which exceeds a percentage equal to the average annual increase in compensation granted to academic personnel employed by said board of regents by appropriations of the General Assembly, plus 2 1/2 percent of compensation received at the time the annual increase granted by appropriations becomes effective, shall not be considered in the computation of average compensation. (Ga. L. 1943, p. 640, § 5; Ga. L. 1950, p. 261, § 4; Ga. L. 1961, p. 392, § 2; Ga. L. 1965, p. 208, § 1; Ga. L. 1966, p. 513, § 2; Ga. L. 1966, p. 562, § 1; Ga. L. 1969, p. 384, § 2; Ga. L. 1971, p. 620, § 1; Ga. L. 1972, p. 140, § 2; Ga. L. 1972, p. 896, § 2; Ga. L. 1973, p. 895, § 1; Ga. L. 1974, p. 1141, § 2; Ga. L. 1975, p. 357, §§ 2, 3; Ga. L. 1975, p. 1328, § 1; Ga. L. 1977, p. 599, § 1; Ga. L. 1978, p. 1913, § 1; Ga. L. 1979, p. 1004, § 1; Ga. L. 1980, p. 1562, § 1; Ga. L. 1981, p. 1892, § 1; Ga. L. 1981, p. 1894, § 3; Ga. L. 1982, p. 3, § 47; Ga. L. 1984, p. 1314, §§ 2, 3; Ga. L. 1985, p. 209, § 1; Ga. L. 1986, p. 620, § 1; Ga. L. 1986, p. 1262, § 1; Ga. L. 1989, p. 249, § 1; Ga. L. 1992, p. 2476, § 2; Ga. L. 1993, p. 86, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Accrued terminal annual leave not included within computation. — Accrued terminal annual leave paid a teacher following the teacher's last day of service should not be included as salary within the teacher's highest five-year compensation computation for retirement allowance purposes. 1973 Op. Att'y Gen. No. 73-173.

Maximum allowance used in calculating whether retirement benefit greater than disability benefit. — When a disabled member of the retirement system qualifies for either a service retirement or a disability retirement, the maximum allowance should be used in

calculating whether the service retirement benefit is greater than the disability retirement benefit and, then, whichever retirement the member is entitled to, the member may subsequently elect any of the optional plans specified in Ga. L. 1943, p. 640, § 5 (see O.C.G.A. § 47-3-121). 1975 Op. Att'y Gen. No. 75-86.

Meaning of average compensation over two consecutive years in the statutory formula for computing a retirement allowance is intended to include only compensation received for service within two consecutive years which have been credited to the mem-

ber as service years towards the member's retirement. 1984 Op. Att'y Gen. No. 84-49.

Teacher not allowed pension based on local retirement fund years. — If a teacher has 13 years of accrued creditable service under the retirement system acquired before July 1, 1943 (now July 1, 1945), immediately prior to joining a local system, and that teacher applies ten of those years toward a local retirement fund, that retired teacher would have to serve five years of membership service under the retirement system at some time to be eligible for the normal retirement benefits payable on the three years not applied to the local system; also, if this teacher acquires the necessary

five years of membership service in order to qualify for the creditation of prior service as a "regular member" of the retirement system, the teacher would be entitled to a benefit based on what would have been the annuity contributions during the ten transferred years had that teacher actually been paying contributions during that period; this teacher, however, would not be entitled to the pension amounts on these ten years applied to the local fund because those amounts must be paid to the local fund. 1950-51 Op. Att'y Gen. No. 75-113.

Former provision providing for minimum "floor" benefits, see 1975 Op. Att'y Gen. No. 75-27; 1975 Op. Att'y Gen. No. 75-113.

47-3-121. Optional retirement allowances; election of such options; revocation of election; effect of divorce.

(a) Until the first payment of any member's retirement allowance becomes normally due, he may elect to convert the retirement allowance, otherwise payable to him, into a modified retirement allowance of equivalent actuarial value in accordance with one of the optional forms named below, provided that if he dies within 30 days after retirement, his optional election shall not be effective and he shall be considered to have been a member in service at the time of his death.

(b) Option one shall consist of a reduced retirement allowance payable during the life of the retired member, with the provision that, if he dies before he has received, in payments of his annuity, the amount of his accumulated contributions at the time of his retirement, the balance of such amount shall be paid to the person, if any, nominated by him by written designation duly executed and filed with the board of trustees, otherwise to the retired member's estate.

(c) Option two shall consist of a reduced retirement allowance payable during the life of the retired member, with the provision that after his death the reduced retirement allowance shall be continued throughout the life of and paid to the person nominated by him by written designation duly executed and filed with the board of trustees at the time of his retirement.

(d) Option three shall consist of a reduced retirement allowance payable during the life of the retired member, with the provision that after his death one-half of the reduced retirement allowance shall be continued throughout the life of and paid to the person nominated by him by written designation duly executed and filed with the board of trustees at the time of his retirement.

(e) Option four shall consist of a reduced retirement allowance payable during the life of the retired member, with the provision that upon his

death some other benefit shall be payable, provided that the total value of the retirement allowance payable during his life and the succeeding benefit shall be computed to be of equivalent actuarial value to the retirement allowance which he would receive had he not chosen an optional retirement allowance under this Code section; provided, further, that the benefit shall be approved by the board of trustees.

(e.1) Option five shall consist of a reduced retirement allowance together with a partial lump sum distribution. This option may be elected by any retiring member including members electing another optional allowance under this Code section except that this option shall not be available to members retiring pursuant to Code Section 47-3-122 or members subject to the requirements of subsection (b) of Code Section 47-3-120. The amount of the lump sum distribution under this subsection may not exceed the sum of 36 months of the monthly retirement allowance the retiring member would have received had he or she not elected the partial lump sum option. The partial lump sum distribution will be made as a single payment payable at the time the first monthly retirement allowance is paid to the retired member.

(f) Whenever any member has elected an optional allowance under this Code section and has nominated his spouse to receive all amounts and benefits payable on or after his death as a result of such election, the member may revoke the election at any time after the entry of a final judgment of complete divorce from the spouse so nominated. Upon any such revocation, the member may elect to return to the retirement allowance otherwise payable to him or to elect to convert the retirement allowance otherwise payable to him into a modified retirement allowance of equal actuarial value as of the time of the election and in accordance with one of the optional forms named in subsections (b) through (e) of this Code section.

(g) The board of trustees shall promulgate rules and regulations to carry out this Code section.

(h) Upon the death of the retired member and then the death of the person designated by him or her to receive continuing retirement benefits under option two, three, four, or five if the total monthly benefits paid, including any partial lump sum distribution, to the retired member and to such person designated to receive continuing benefits do not equal or exceed the retired member's accumulated contributions at the time of his or her retirement, the difference shall be refunded to the person designated in writing by the retired member to receive such a refund of this difference. If no such person is designated to receive this difference, or if such designated person has predeceased the person designated to receive continuing monthly retirement benefits, or if such designees are the same person, this difference shall be paid to the estate of the person designated to receive continuing monthly retirement benefits.

(i) Upon the death of the person designated by the retired member to receive continuing monthly retirement benefits under option two, three, four, or five and then the death of the retired member, if the total monthly benefits paid, including any partial lump sum distribution, to the retired member prior to his or her death do not equal or exceed the retired member's accumulated contributions at the time of his or her retirement, the difference shall be refunded to the person designated in writing by the retired member to receive such a refund of this difference. If the person designated by the retired member to receive a refund of this difference also predeceases the retired member, or if such designees are the same person, or if no person is designated to receive this difference, this difference shall be paid to the estate of the retired member.

(j) Any other provisions of this Code section or of this chapter to the contrary notwithstanding, the board of trustees may, by rule or regulation, require that when a member or a retired member dies and the beneficiary is a person other than the surviving spouse of the member, the benefits payable to the beneficiary shall be paid to the beneficiary within a definite time period immediately following the death of the member or retired member.

(k) Any retired member who elected option two, three, or four may, after the death of the person designated by the retired member to continue receiving monthly benefits, revoke the election and elect a new option providing for a retirement allowance computed to be the actuarial equivalent of the retirement allowance in effect immediately prior to the effective date of the new option. Such new option shall be effective on the first day of the month following the month in which such new election is made.

(l) If a member has elected an optional allowance under this Code section and has nominated his or her spouse and one or more other persons to receive all amounts and benefits payable on or after his or her death as a result of such election, then after the entry of a final judgment of complete divorce from the spouse so nominated the member may revoke the election as to such spouse. Upon any such revocation, the member may elect one of the following options:

(1) The member may allocate the spouse's percentage among the beneficiaries other than the spouse, in which event the member's benefit shall be recalculated to compensate for the remaining survivor's benefit as determined by an actuary; or

(2) The beneficiaries other than the spouse shall continue to be entitled to receive the same percentage of the member's retirement allowance they had before the revocation, and the member's benefit shall return to the allowance which would otherwise be payable to him or her if he or she had not elected such option, reduced to compensate for the remaining survivor's benefit as determined by an actuary.

This subsection shall apply to final judgments received by the retirement system on or after July 1, 2008. Any adjustments shall be effective on the first day of the month following the receipt of the final judgment by the retirement system. In no event shall any adjustment be made effective retroactively. (Ga. L. 1943, p. 640, § 5; Ga. L. 1977, p. 841, § 1; Ga. L. 1981, p. 1894, § 5; Ga. L. 1984, p. 810, § 2; Ga. L. 1992, p. 1554, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 1998, p. 175, § 1; Ga. L. 2004, p. 589, §§ 1, 2, 3; Ga. L. 2008, p. 144, § 1/HB 656.)

The 2008 amendment, effective July 1, 2008, added subsection (l).

Cross references. — Revocation of elec-

tion of benefits for public employees upon divorce, § 47-3-121.

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Election of specified optional plan. — When a disabled member of the retirement system qualifies for either a service retirement or a disability retirement, the maximum allowance should be used in calculating whether the service retirement benefit is greater than the disability retirement benefit and, then, whichever retirement the member is entitled to, the member may subsequently elect any of the optional plans specified Ga. L. 1943, p. 640, § 5 (see O.C.G.A. § 47-3-121). 1975 Op. Att’y Gen. No. 75-86.

Failure to exercise option waives option. — Unless option is exercised under retire-

ment plan, the option never comes into being as a contract, regardless of the probable reason for failing to exercise the option. 1954-56 Op. Att’y Gen. p. 615.

Exercise by retiree insane at time of retirement. — Beneficiary of a deceased member of the retirement system has no claim based on the allegation that the retiree failed to exercise the option that would have been to the retiree’s benefit as a beneficiary since the retiree was insane at the time the retiree elected to retire. 1954-56 Op. Att’y Gen. p. 615.

JUDICIAL DECISIONS

Use of mortality tables in determining actuarial equivalence. — Although, under O.C.G.A. § 47-3-23(b), the Board of Trustees of the Teachers Retirement System of Georgia adopted new mortality tables every four years, the retirees’ optional-plan benefits were erroneously calculated using option factors, based upon a mortality table and interest rate, adopted in 1983; in determin-

ing actuarial equivalence between the optional-plan benefits and the maximum-plan benefits as required under O.C.G.A. § 47-3-121(a), O.C.G.A. §§ 47-3-1(2) and 47-3-23(b) required that the most recent mortality tables be used for such purposes. *Plymel v. Teachers Ret. Sys.*, 281 Ga. 409, 637 S.E.2d 379 (2006).

47-3-122. Eligibility and application for disability benefits; amount of disability benefits; reexamination of recipients; reduction.

(a) Any member who is in service or on authorized leave may retire on disability upon written application to the board of trustees if the member has at least ten years of creditable service at the time of retirement and if the member’s application for disability retirement is approved by the medical board. The medical board shall approve the application if, after a medical examination of such member by a qualified physician appointed by the board of trustees, it finds that the applicant is mentally or physically

incapacitated for further performance of duty involving active membership with the retirement system, that such incapacity is likely to be permanent, and that the applicant should be retired. The effective date of retirement will be the first of the month in which the application is received by the board of trustees, provided that no retirement application will be effective earlier than the first of the month following the final month of the applicant's employment. Applications for retirement will not be accepted more than 90 days in advance of the effective date of retirement.

(a.1) If the board of trustees determines by clear and convincing evidence presented to the board by or on behalf of the member that the disability itself was the cause of failure to file a timely application for disability retirement, the board of trustees is authorized to calculate the annual benefit provided for in subsection (c) of this Code section as if the member had retired on such effective date of disability retirement increased by any increases in benefits which the member would have received if he or she had retired on that date and adjust the benefits of such retiree as of the first of the month following such determination; provided, however, that the board of trustees is not authorized to pay retroactive disability benefits. This subsection applies to former members who became disabled at any time prior to July 1, 1996, as well as to former members who become disabled on or after July 1, 1996.

(b) If a disabled member qualifies for either service retirement or disability retirement, he shall receive the greater amount.

(c) The disability benefit allowance shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement derived through the application of disability actuarial mortality tables approved by the board of trustees; and

(2) An annual pension computed under the formula set forth in subsection (a) of Code Section 47-3-120, but with no reduction in benefits set forth in subsection (b) of Code Section 47-3-120 for retirement under the age of 60.

(d) If a member who has retired on a disability retirement allowance elects an option under Code Section 47-3-121 rather than the maximum allowance, then the member will receive a reduced retirement allowance based on actuarial disability mortality tables adopted by the board of trustees. The nearest whole year of the attained ages of both the retiring member and his designated beneficiary at the date of his retirement shall be used in the application of such actuarial tables in order to determine the monthly retirement benefits.

(e) Once each year during the first five years following retirement of a member on a disability retirement allowance and once in every three-year

period thereafter, the board of trustees may require a disability beneficiary who has not yet attained age 60 to undergo a medical examination, such examination to be made at his place of residence or other place mutually agreed upon, by a physician or physicians designated by the medical board. Such beneficiary may himself request such an examination. If any disability beneficiary who has not yet attained age 60 refuses to submit to such medical examination, his pension may be discontinued by the board of trustees until his withdrawal of such refusal; and if his refusal continues for one year, all his rights in and to his pension may be revoked by the board of trustees.

(f) If it is determined that a disability beneficiary is engaged in a gainful occupation or if the medical board reports and certifies to the board of trustees that a disability beneficiary is able to engage in a gainful occupation paying more than the difference between his disability retirement benefit and the current rate of compensation for the position which he held at the time of his disability retirement, the board of trustees may reduce his retirement benefit to an amount at which his total retirement benefit together with the amount earnable by him equals the current rate of compensation for the position which he held at the time of his disability retirement, as determined by the board of trustees. The board of trustees may make further changes in his disability benefit in response to further change in his earning capacity, provided that the new pension shall not cause the total of his disability retirement benefit together with the amount earnable by him to exceed the current rate of compensation, as determined by the board of trustees, for the position which he held at the time of his disability retirement. (Ga. L. 1943, p. 640, § 5; Ga. L. 1950, p. 261, § 5; Ga. L. 1953, Jan.-Feb. Sess., p. 373, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 114, §§ 2, 3; Ga. L. 1956, p. 400, § 1; Ga. L. 1961, p. 392, § 3; Ga. L. 1963, p. 542, § 2; Ga. L. 1965, p. 267, §§ 1, 2; Ga. L. 1965, p. 438, § 5; Ga. L. 1969, p. 388, § 2; Ga. L. 1970, p. 217, §§ 3, 4; Ga. L. 1972, p. 140, § 3; Ga. L. 1972, p. 896, § 3; Ga. L. 1973, p. 905, § 1; Ga. L. 1974, p. 1023, §§ 3, 4; Ga. L. 1982, p. 3, § 47; Ga. L. 1992, p. 2180, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 1996, p. 302, § 1; Ga. L. 2010, p. 427, §§ 9, 10/HB 969.)

The 2010 amendment, effective May 24, 2010, substituted “60” for “62” at the end of paragraph (c)(2) and twice in subsection (e).

Editor’s notes. — Ga. L. 1992, p. 2180, § 1, which would have amended subsection

(a) and added subsection (a.1) of this Code section, was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and was repealed on July 1, 1992. See the state auditor’s report at Ga. L. 1992, p. CDV.

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Determination of whether service benefit greater than disability benefit. — When a disabled member of the retirement system qualifies for either a service retirement or a disability retirement, the maximum allow-

ance under Ga. L. 1975, p. 357, §§ 2 and 3 and Ga. L. 1975, p. 1328, § 1 (see O.C.G.A. § 47-3-120) should be used in calculating whether the service retirement benefit is greater than the disability retirement benefit

and, then, whichever retirement the member is entitled to, the member may subsequently elect any of the optional plans specified in Ga. L. 1943, p. 640, § 5 (see O.C.G.A. § 47-3-121). 1975 Op. Att'y Gen. No. 75-86; 1980 Op. Att'y Gen. No. 80-68.

Take disability when allowance at least equals service allowance. — Member, otherwise qualified for service retirement, whose application for disability retirement has

been approved by the medical board of the system and whose maximum disability retirement allowance would be greater than or equal to the maximum service retirement allowance, is entitled to a disability retirement allowance only. In such a situation, a member does not have an option but is required to take disability retirement. 1980 Op. Att'y Gen. No. 80-68.

47-3-123. Benefits payable upon the death of a member before retirement.

(a) Upon death of any member in service, the beneficiary nominated by the member by means of a written designation duly executed and filed with the board of trustees shall be entitled to:

(1) A cash refund of the member's contributions and interest accumulated at the date of the member's death;

(2) A monthly benefit computed in the same manner as though the member had retired as of the date of death on either a service retirement allowance as provided for in Code Section 47-3-120 or a disability retirement allowance as provided for in Code Section 47-3-122 and elected option two, whichever calculation produces the larger benefit; or

(3) A choice of electing the benefits under either paragraph (1) or (2) of this subsection.

The benefit to which the beneficiary is entitled shall depend on the beneficiary designation form on file with the retirement system and the deceased member's creditable service. In order for a beneficiary to be eligible for a monthly death benefit under paragraph (2) or (3) of this subsection, the deceased member must have had a minimum of ten years of creditable service at the time of death. The nearest year of the attained ages of both the member and the beneficiary at the time of the member's death will be used in the application of appropriate actuarial tables and in determining the monthly benefits of the beneficiary. A monthly death benefit shall commence the first day of the month following the month in which the member's death occurred.

(b) Upon the death of a member in service who has not named a beneficiary on a beneficiary designation form filed with the retirement system and who has:

(1) Less than ten years of creditable service, the death benefit shall consist of a refund to his surviving spouse of the member's accumulated contributions and, if there is no surviving spouse, to the deceased member's estate;

(2) Ten or more years of creditable service and no surviving spouse, then the death benefit shall consist of a refund to his estate of the member's accumulated contributions; or

(3) Ten or more years of creditable service and a surviving spouse, then the death benefit, at the option of the surviving spouse, shall consist of a refund to the surviving spouse of the member's accumulated contributions or the payment to the surviving spouse of the monthly benefit under paragraph (2) of subsection (a) of this Code section in accordance with the amount of creditable service of the deceased member.

(c) Upon the death of a member in service with more than ten years of creditable service and then thereafter the death of the beneficiary nominated by the member by means of a written designation duly executed and filed with the board of trustees, or where no beneficiary was so designated by the member and the member was survived by the member's spouse, the death of the member's spouse, in the event that the designated beneficiary of the member chose to receive a monthly benefit pursuant to paragraph (2) of subsection (a) of this Code section and the total monthly benefits paid to such designated beneficiary prior to his or her death did not equal or exceed the member's accumulated contributions at the time of the member's death, or where no beneficiary was designated and the surviving spouse of the member chose to receive monthly benefits pursuant to paragraph (3) of subsection (b) of this Code section and the monthly benefits paid to the member's spouse prior to his or her death did not equal or exceed the member's accumulated contributions at the time of the member's death, the difference shall be refunded to the person designated in writing by the member to receive such a refund of this difference. If no such person is designated to receive this difference or if such designated person has predeceased the member's designated beneficiary or spouse, this difference shall be paid to the estate of the designated beneficiary or where no person was designated by the member as beneficiary, to the estate of the member's spouse. (Ga. L. 1965, p. 267, §§ 3, 4; Ga. L. 1973, p. 905, § 2; Ga. L. 1974, p. 1023, § 5; Ga. L. 1978, p. 1442, § 1; Ga. L. 1984, p. 998, § 2.)

JUDICIAL DECISIONS

Designation of beneficiary document ineffective as will. — Although the designation-of-beneficiary document for purposes of decedent's Teachers Retirement System benefits executed by the decedent in 1965 did contain the signature of a notary public, as well as the signature of the decedent's employer, there was no showing that

these persons signed the document in the presence of the decedent as attesting witnesses and therefore the document could not operate as a will. *Kirksey v. Teachers Retirement Sys.*, 250 Ga. 884, 302 S.E.2d 101 (1983).

Cited in *Shell v. Teachers Ret. Sys. of Ga.*, 291 Ga. App. 571, 662 S.E.2d 345 (2008).

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Editor's notes. — In light of the similarity of the provisions, opinions under Ga. L.

1943, p. 640, § 5, as amended, are included in the annotations for this section.

Blank method of payment filled by beneficiary. — When a member has failed to file a beneficiary designation form electing a method of payment authorized by this statute, the beneficiary previously designated by the member and qualified to receive the benefits should be accorded the right to choose the form of payment. 1967 Op. Att’y Gen. No. 67-91 (see O.C.G.A. § 47-3-123).

Beneficiary change not effective when member dies before form delivered. — When a member who had properly executed a form for change of beneficiary and delivered the form to the school superintendent

died before delivery of the form to the board of trustees, such change of beneficiary never became effective. 1952-53 Op. Att’y Gen. p. 346 (rendered under Ga. L. 1943, p. 640, § 5, as amended).

Contributions of member murdered by beneficiary payable to estate. — As a matter of public policy, the accumulated contributions of a member murdered by her husband are payable to her estate, even though her husband was designated as beneficiary. 1948-49 Op. Att’y Gen. p. 534 (rendered under Ga. L. 1943, p. 640, § 5, as amended).

47-3-124. Application of minimum retirement allowances to persons who retired pursuant to county, municipal, or local board of education retirement or pension systems.

(a) As used in this Code section, the term:

(1) “Local retirement allowance” means the retirement or pension allowance payable by a local retirement system to a locally retired teacher.

(2) “Local retirement system” means a retirement or pension system of a county, municipality, or local board of education which includes teachers as members thereof or which is paying retirement or pension allowances to locally retired teachers.

(3) “Locally retired teacher” means a teacher who has retired or hereafter retires pursuant to a local retirement system.

(4) “Total retirement allowance” means the local retirement allowance plus any amounts which are payable by the board of trustees to the locally retired teacher pursuant to the provisions of this chapter other than this Code section.

(b) Any other provisions of this chapter or any other law to the contrary notwithstanding, the minimum retirement allowance provided by subsection (a) of Code Section 47-3-120 shall be applicable to locally retired teachers who, for such purposes, shall be deemed to be members of this retirement system. In determining the minimum retirement allowance payable under subsection (a) of Code Section 47-3-120 to a locally retired teacher, credit shall be given for all teaching service prior to January 1, 1945, under the local retirement system if the local retirement system did not allow its teachers to establish credit for any such service. Subject to the provisions of subsections (c), (d), and (e) of this Code section, for each locally retired teacher whose total retirement allowance is less than the minimum retirement allowance provided for by subsection (a) of Code Section 47-3-120, the board of trustees shall pay monthly directly to such locally retired teacher an amount equal to the difference between the total retirement allowance and the minimum retirement allowance.

(c) As applied to locally retired teachers who retired prior to July 1, 1986:

(1) The provisions of this Code section shall not decrease the amount payable by the board of trustees to an amount less than the amount payable pursuant to the authority of this Code section prior to July 1, 1986;

(2) Increases in the local retirement allowance granted on or after July 1, 1986, by the local retirement system shall cause the amount payable by the board of trustees pursuant to the authority of this Code section to be decreased in the same amount as the increase granted by the local retirement system; and

(3) Increases in the total retirement allowance payable to a locally retired teacher which hereafter result from new or increased allowances paid by the board of trustees to the locally retired teacher pursuant to provisions of this chapter other than this Code section and Code Section 47-3-126.2 shall not decrease the amount payable by the board of trustees pursuant to the authority of this Code section.

(d) As applied to locally retired teachers who retire on or after July 1, 1986:

(1) Increases in the local retirement allowance granted after retirement by the local retirement system shall cause the amount payable by the board of trustees pursuant to the authority of this Code section to be decreased in the same amount as the increase granted by the local retirement system; and

(2) Increases after retirement in the total retirement allowance payable to a locally retired teacher which result from new or increased allowances paid by the board of trustees to the locally retired teacher pursuant to provisions of this chapter other than this Code section shall not decrease the amount payable by the board of trustees pursuant to the authority of this Code section.

(e) Notwithstanding the provisions of subsections (c) and (d) of this Code section, if the minimum retirement allowance provided for by subsection (a) of Code Section 47-3-120 is increased on or after July 1, 1986, the amount payable by the board of trustees to a locally retired teacher pursuant to the authority of this Code section shall be the greater of either of the following amounts:

(1) The amount necessary to increase the sum of the total retirement allowance plus the amount payable pursuant to the authority of this Code section to an amount equal to the increased minimum retirement allowance; or

(2) The same amount which the board of trustees was paying pursuant to the authority of this Code section on the date the increase in the

minimum retirement allowance became effective if the total retirement allowance payable on that date exceeds the increased minimum retirement allowance. (Ga. L. 1974, p. 1139, § 1; Ga. L. 1978, p. 237, § 1; Ga. L. 1979, p. 1004, § 2; Ga. L. 1981, p. 411, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1986, p. 620, § 2.)

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Section conditioned upon ratification of constitutional amendment. — Section was accompanied by and conditioned upon the ratification of an amendment to the Georgia Constitution authorizing the General Assembly to provide by law for retirement system retirement benefits to teachers retiring with a local retirement fund. 1975 Op. Att'y Gen. No. 75-9 (see O.C.G.A. § 47-3-124).

Section includes theretofore excluded local fund retirees. — Upon reading Ga. L. 1974, p. 1139, § 1 (see O.C.G.A. § 47-3-124) within the context of Ga. L. 1943, p. 640 et seq. (see O.C.G.A. Ch. 3, T. 47), and upon considering precipitant events leading to the passage of Ga. L. 1943, p. 640 et seq., it becomes evident that Ga. L. 1974, p. 1139, § 1 was designed to include theretofore excluded local fund retirees. 1975 Op. Att'y Gen. No. 75-9.

Section's applicability not limited to "classroom teachers." — Term "classroom teacher" is used within the definition of "teacher" in the Teachers Retirement Act. It is a recognized term already employed by the Act. If the General Assembly meant to limit the application of Ga. Laws 1974, pp. 1139-41, to classroom or "blackboard" teachers, surely the term "classroom teachers" would have been utilized. Furthermore, it would seem manifestly difficult to articulate the scope and definition of the term "public schoolteachers." If the General Assembly intended to limit the application of the 1974 amendment to a sub-class of "teachers," then more of a definition than "public schoolteachers" would have been provided. 1975 Op. Att'y Gen. No. 75-9.

Section includes all "teachers," as defined in § 47-3-1(28). — Term "public school teachers," as used in Ga. L. 1974, p. 1139, § 1 (see O.C.G.A. § 47-3-124), should be interpreted to mean and include the equivalent classes of individuals retiring under

local retirement funds as are included within the definition of "teacher" in Ga. L. 1974, p. 1179, § 1 (see O.C.G.A. § 47-3-1(28)). 1975 Op. Att'y Gen. No. 75-9 (rendered prior to 1986 amendment which changed "public school teachers" to "locally retired teachers").

County cost-of-living increases calculated into state supplement. — Cost-of-living increases in county retirement fund are considered by retirement system in calculating state supplement paid by the retirement system pursuant to the provisions of this statute. 1977 Op. Att'y Gen. No. 77-41 (see O.C.G.A. § 47-3-124).

Teacher not allowed pension based on local retirement fund years. — If a teacher has 13 years of accrued creditable service under the retirement system acquired before July 1, 1943 (now January 1, 1945), immediately prior to joining a local system, and that teacher applies ten of those years toward a local retirement fund, that retired teacher would have to serve five years of membership service under the retirement system at some time to be eligible for the normal retirement benefits payable on the three years not applied to the local system; also, if this teacher acquires the necessary five years of membership service in order to qualify for the creditation of prior service as a "regular member" of the retirement system, the teacher would be entitled to a benefit based on what would have been the annuity contributions during the ten transferred years had that teacher actually been paying contributions during that period; this teacher, however, would not be entitled to the pension amounts on these ten years applied to the local fund because those amounts must be paid to the local fund. 1950-51 Op. Att'y Gen. No. 75-113.

Former provision providing for minimum "floor" benefits, see 1975 Op. Att'y Gen. No. 75-27.

47-3-125. Application of increases in retirement benefits to persons who retired pursuant to county, municipal, or local board of education retirement or pension systems.

On and after July 1, 1980, and to the extent that the necessary funds are appropriated therefor by the General Assembly, whenever the retirement benefits of beneficiaries under this chapter are increased pursuant to Code Section 47-3-126, the board of trustees shall make a corresponding increase in the retirement benefits of retired public school teachers who retired prior to July 1, 1978, pursuant to a county, municipal, or local board of education retirement or pension system. Such corresponding increase shall be equivalent to the percentage increase in retirement benefits of beneficiaries under this chapter. For the purposes of this Code section, such retired public school teachers shall be deemed to be members of the retirement system. The board of trustees shall pay directly to each such retired public school teacher the increased retirement benefits provided for in this Code section. Increases in retirement benefits granted on and after July 1, 1980, to such retired public school teachers by a county, municipal, or local board of education retirement or pension system shall not reduce or replace the increase in retirement benefits payable to such retired public school teachers under this Code section. If the General Assembly at any time appropriates some but not all of the funds necessary to fund the increase in retirement benefits under this Code section, then the increased retirement benefit otherwise payable under this Code section shall be reduced pro rata by the board of trustees in accordance with the funds actually appropriated by the General Assembly for such purpose. (Ga. L. 1980, p. 1783, § 1; Ga. L. 1982, p. 3, § 47.)

47-3-126. Postretirement benefit adjustments.

The board of trustees is authorized to adopt a method of providing postretirement benefit adjustments for a beneficiary in his postretirement years. Such method of adjustment may result in the adoption by the board of trustees of a method of financing other than that described in paragraphs (1) through (3) of Code Section 47-3-43 and shall be based upon:

- (1) Recommendation of the actuaries for the board of trustees; and
- (2) Maintaining the actuarial soundness of the system.

The board of trustees may specify a minimum age which a beneficiary must have attained in order to be eligible for the postretirement benefit adjustment. (Ga. L. 1969, p. 391, § 1; Ga. L. 1971, p. 573, § 1; Ga. L. 1975, p. 1601, § 1; Ga. L. 1977, p. 1011, § 1.)

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Appropriations Act cannot place ceiling on adjustment. — General Assembly cannot, solely through language in an appropriations Act (see Ga. Const. 1983, Art. III, Sec. IX, Para. IV), place a ceiling or limit on the amount of a cost-of-living increase granted to a retiree of the Employees' Retirement System or Teachers Retirement System; such increases may be granted retroactively to January 1, 1984. 1984 Op. Att'y Gen. No. 84-19.

47-3-126.1. Postretirement benefit adjustments effective July 1, 1984.

(a) As used in this Code section, the term "beneficiary" shall have the meaning specified in paragraph (7) of Code Section 47-3-1 and shall also mean and include any retired public school teacher who retired pursuant to any county, municipal, or local board of education retirement or pension system.

(b) Subject to the limitations of subsection (c) of this Code section, effective July 1, 1984, the monthly retirement benefit of each beneficiary shall be increased by a percentage which varies in accordance with the time of retirement as follows:

<u>Time of Retirement</u>	<u>Percentage Increase</u>
Prior to July 1, 1964	20.0
July 1, 1964, through June 30, 1965	19.5
July 1, 1965, through June 30, 1966	18.0
July 1, 1966, through June 30, 1967	16.5
July 1, 1967, through June 30, 1968	15.0
July 1, 1968, through June 30, 1969	13.5
July 1, 1969, through June 30, 1970	12.0
July 1, 1970, through June 30, 1971	10.5
July 1, 1971, through June 30, 1972	9.0
July 1, 1972, through June 30, 1973	7.5
July 1, 1973, through June 30, 1974	6.0
July 1, 1974, through June 30, 1975	5.0
July 1, 1975, through June 30, 1976	4.0
July 1, 1976, through June 30, 1977	3.0
July 1, 1977, through June 30, 1978	2.0
July 1, 1978, through June 30, 1980	1.0
After June 30, 1980	0

(c) The full percentage increase provided for in subsection (b) of this Code section shall apply only to those beneficiaries who had 20 or more years of creditable service at the time of retirement. For those beneficiaries who had at least ten but less than 20 years of creditable service at the time of retirement, the monthly benefit increase provided for by subsection (b) of this Code section shall be reduced by 5 percent for each year less than 20 years of creditable service. Beneficiaries who had less than ten years of creditable service shall not receive an increase in their monthly retirement benefit under this Code section. No retirement benefit shall exceed \$1,500.00 per month as a result of an increase in the monthly retirement benefit under this Code section.

(d) The implementation of the monthly retirement benefit increases provided for by this Code section shall be contingent upon appropriations by the General Assembly specifically for the purpose of funding the provisions of this Code section. In the event the General Assembly appropriates an amount which is insufficient to fund fully the benefit increases provided for by this Code section, the benefit increases shall be reduced pro rata in accordance with the amount actually appropriated, and, in that event, the provisions of this Code section shall remain effective until, in subsequent annual appropriations, the benefit increases provided for in this Code section are fully funded and implemented. When fully funded and implemented, this Code section shall not provide any authority for the board of trustees to grant additional postretirement benefit adjustments, but this Code section shall not supersede or repeal the authority granted to the board of trustees by Code Section 47-3-126. (Code 1981, § 47-3-126.1, enacted by Ga. L. 1984, p. 990, § 1; Ga. L. 2000, p. 131, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1228 et seq. **C.J.S.** — 67 C.J.S., Officers and Public Employees, § 318.

47-3-126.2. Postretirement benefit adjustments effective July 1, 1986.

(a) As used in this Code section, the term “beneficiary” shall have the meaning specified in paragraph (7) of Code Section 47-3-1 and shall also mean:

- (1) Any retired teacher who retired pursuant to any county, municipal, or local board of education retirement or pension system;
- (2) The surviving spouse of any retired teacher who retired pursuant to a county, municipal, or local board of education retirement or pension system if such surviving spouse is eligible to receive and is receiving a monthly benefit pursuant to the local retirement or pension system; and

(3) The surviving spouse of a teacher who was a member of a county, municipal, or local board of education retirement or pension system and who died prior to retirement if such surviving spouse is eligible to receive and is receiving a monthly benefit pursuant to the local retirement or pension system.

(b) Effective July 1, 1986, the monthly retirement benefit of each beneficiary who was receiving a benefit on July 1, 1981, shall be increased by:

- (1) One dollar for each full year of creditable service which the beneficiary had at the time of retirement; plus
- (2) One dollar for each full year which has elapsed from the date of retirement until July 1, 1981.

(c) When the postretirement benefit adjustment provided by this Code section has been granted, there shall be no further postretirement benefit adjustments pursuant to the authority of this Code section. (Code 1981, § 47-3-126.2, enacted by Ga. L. 1986, p. 620, § 3; Ga. L. 2000, p. 131, § 1.)

47-3-126.3. Postretirement benefit adjustments.

(a) As used in this Code section, the term “beneficiary” shall have the meaning specified in paragraph (7) of Code Section 47-3-1 and shall also mean and include any retired public school teacher who retired pursuant to any county, municipal, or local board of education retirement or pension system.

(b) Subject to the limitations of subsection (c) of this Code section, effective July 1, 1988, the monthly retirement benefit of each beneficiary shall be increased by a percentage which varies in accordance with the time of retirement as follows:

<u>Time of Retirement</u>	<u>Percentage Increase</u>
Prior to July 1, 1964	15.0
July 1, 1964, through June 30, 1969	13.0
July 1, 1969, through June 30, 1970	10.0
July 1, 1970, through June 30, 1971	8.0
July 1, 1971, through June 30, 1972	7.0
July 1, 1972, through June 30, 1973	6.0
July 1, 1973, through June 30, 1974	5.5
July 1, 1974, through June 30, 1975	5.0

July 1, 1975, through June 30, 1976	4.0
July 1, 1976, through June 30, 1977	3.5
July 1, 1977, through June 30, 1978	3.0
July 1, 1978, through June 30, 1979	2.5
July 1, 1979, through June 30, 1980	2.0
July 1, 1980, through June 30, 1981	1.5
July 1, 1981, through June 30, 1982	1.0
July 1, 1982, through June 30, 1983	0.5
July 1, 1983, through June 30, 1984	0.5
After June 30, 1984	0.0

(c) The full percentage increase provided for in subsection (b) of this Code section shall apply only to those beneficiaries who had 20 or more years of creditable service at the time of retirement. For those beneficiaries who had at least ten but less than 20 years of creditable service at the time of retirement, the monthly benefit increase provided for by subsection (b) of this Code section shall be reduced by 5 percent for each year less than 20 years of creditable service. Beneficiaries who had less than ten years of creditable service shall not receive an increase in their monthly retirement benefit under this Code section. No one person’s retirement benefit or combination of retirement benefits shall exceed \$1,500.00 per month as a result of an increase in the monthly retirement benefit under this Code section. (Code 1981, § 47-3-126.3, enacted by Ga. L. 1988, p. 343, § 2; Ga. L. 2000, p. 131, § 1.)

47-3-126.4. Postretirement benefit for beneficiary.

(a) As used in this Code section, the term “beneficiary” shall have the meaning specified in paragraph (7) of Code Section 47-3-1.

(b) Subject to the limitations of subsection (c) of this Code section, effective July 1, 2006, the monthly retirement benefit of each beneficiary shall be increased by a percentage which varies in accordance with the time of retirement as follows:

<u>Time of Retirement</u>	<u>Percentage Increase</u>
Prior to July 1, 1974	10.0
July 1, 1974, through June 30, 1982	6.0
July 1, 1982, through June 30, 1987	2.0
After June 30, 1987	0.0

(c) The full percentage increase provided for in subsection (b) of this Code section shall apply only to those beneficiaries who had 20 or more years of creditable service at the time of retirement. For those beneficiaries who had at least ten but less than 20 years of creditable service at the time of retirement, the monthly benefit increase provided for by subsection (b) of this Code section shall be reduced by 5 percent for each year less than 20 years of creditable service. Beneficiaries who had less than ten years of creditable service shall not receive an increase in their monthly retirement benefit under this Code section.

(d) Any county, municipal, or local board of education is authorized, but not required, to provide a postretirement benefit increase as provided in this Code section to any teacher who retired under a public retirement system or fund maintained by such county, municipal, or local board of education, provided that:

(1) The actuary for the fund certifies that such increase would not result in any unfunded accrued liability as to such retirement system; or

(2) The affected political subdivision appropriates sufficient funds to cover the actuarial cost of granting such benefit. (Code 1981, § 47-3-126.4, enacted by Ga. L. 2006, p. 696, § 1/HB 400.)

47-3-127. Effect of restoration to service on retirement allowances; creditable service after restoration to service.

(a) If, except as provided in Code Section 47-3-127.1, a beneficiary is restored to service as a teacher, he or she may elect:

(1) Cessation of his or her retirement allowance, in which case he or she shall again become a contributing member of the retirement system and be governed by the retirement provisions of this chapter; or

(2) Not to reinstate his or her membership in the retirement system, in which case his or her retirement benefits shall be suspended during the period of time he or she is restored to service. Upon cessation of such service, his or her prior retirement allowance shall be resumed.

If the returning beneficiary fails to elect either choice, his or her status shall be as if he or she had elected paragraph (1) of this subsection.

(b) Anything in this chapter to the contrary notwithstanding, any prior service certificate on the basis of which a member's creditable service was computed at the time of his retirement shall be restored to full force and effect upon his restoration to service. Upon his subsequent retirement he shall be credited with all his service as a member, including service rendered after restoration to service. If he is restored to service on or after attaining age 50, his retirement benefits upon subsequent retirement shall

not exceed the sum of the pension which he was receiving immediately prior to his last restoration to membership and the pension payable in respect to his subsequent service, except as provided in subsection (c) of this Code section, provided that if he has served at least two school years as a contributing member after restoration to service and if he reimburses the retirement system for any retirement benefits received from the retirement system during his retirement, plus regular interest, such person shall receive credit for any prior creditable service; and upon subsequent retirement he shall be credited with all his service as a member, which service shall all be counted in determining his retirement benefits upon subsequent retirement. He shall not be limited to the retirement benefits he was receiving prior to his last restoration to membership in the retirement system.

(c) The retirement benefits payable to a beneficiary who retired prior to July 1, 1961, who was restored to service and who subsequently retired on or after July 1, 1961, shall be determined under the pension provisions in effect at the time of that subsequent retirement, provided that such member completed at least one year of creditable service subsequent to such restoration to service.

(d) Anything in this chapter to the contrary notwithstanding, a beneficiary may elect to return to service on an hourly basis as a classroom aide, provided such service is less than full time, or as a substitute teacher without reinstating his membership in the system. If such election is made, he shall continue to receive his retirement benefits and any postretirement benefit adjustments granted, if any, during such part-time service. Such part-time service shall not constitute creditable service and such beneficiary shall not be entitled to a recomputation of retirement benefits upon a cessation of part-time service.

(e)(1) A beneficiary of this retirement system shall be deemed to be restored to service within the meaning of this Code section if, except as otherwise provided in Code Section 47-3-127.1, such beneficiary is employed by an employer:

(A) In a position previously held by a teacher; or

(B) In a capacity which would normally be held by a teacher, as determined by the board of trustees, whether employed directly or indirectly, for which the compensation is greater than one-half of the beneficiary's average annual compensation used to calculate his or her retirement benefit or the beneficiary's final compensation at the time of his or her retirement, whichever is larger; provided, however, that such amount shall be increased by any annual cost-of-living adjustment reflected in the state teacher salary schedule.

(2) If an employer employs a beneficiary in any manner specified in paragraph (1) of this subsection during the calendar month of the effective date of the beneficiary's retirement, the employer shall reim-

burse the retirement system for all benefits wrongly paid to the beneficiary.

(3) If an employer employs a beneficiary in any manner specified in paragraph (1) of this subsection any time after the last day of the calendar month of the effective date of the beneficiary's retirement, the employer shall so notify the board of trustees, stating the beneficiary's name, salary, number of hours, whether the beneficiary is employed as a teacher, and such other information as the board of trustees requests, and the employer shall reimburse the retirement system for all benefits wrongly paid to the beneficiary.

(4) It shall be the duty of a beneficiary of this retirement system to notify an employer of his or her status as a beneficiary prior to accepting employment with that employer. If a beneficiary fails to so notify an employer and as a result the employer becomes obligated to this retirement system pursuant to paragraph (2) or (3) of this subsection, the beneficiary shall be liable to the employer for any amount the employer is obligated to pay to this retirement system.

(5) If an employer who is obligated to this retirement system pursuant to paragraph (2) or (3) of this subsection fails to pay the amount due, such amount shall be deducted from any funds payable to the employer by the state, including without limitation the Department of Education and the board of regents, and paid to the board of trustees of this retirement system. (Ga. L. 1943, p. 640, § 6; Ga. L. 1962, p. 723, § 15; Ga. L. 1969, p. 431, § 1; Ga. L. 1972, p. 896, § 4; Ga. L. 1983, p. 949, § 1; Ga. L. 1998, p. 620, § 1; Ga. L. 1999, p. 866, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2002, p. 585, §§ 1, 2.)

JUDICIAL DECISIONS

Retiree restored to service rejoins system upon reimbursement. — Retired teacher who has subsequently been restored to service may rejoin the retirement system only upon reimbursing the system for the benefits already received. *Davis v. Griffin-Spalding County Bd. of Educ.*, 445 F. Supp. 1048 (N.D. Ga. 1975).

Suspension of retirement benefits after reinstatement. — Court properly refused to suspend the benefits of a school superintendent on the grounds that the superinten-

dent had been reinstated to the superintendent's former position since (1) the superintendent retired and was later hired as an independent consultant to hold the system together while the school board sought to hire a new superintendent, and (2) the school board did not control the time, manner, and method of the superintendent's work and considered the superintendent to be an independent consultant. *Teachers' Retirement Sys. v. Forehand*, 234 Ga. App. 437, 506 S.E.2d 913 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Applies to teachers retired after age 50 subsequently restored to service. — Statute applies to teachers who retired after age 50, and who are subsequently restored to ser-

vice, regardless of whether the teachers have been retired on a disability or a service pension. 1954-56 Op. Att'y Gen. p. 614 (see O.C.G.A. § 47-3-127).

Section not applicable to retired teacher employed by another state agency. — Subsequent employment of a retired teacher by another state agency, whose employees are under a different retirement program, does not authorize the stoppage of retirement payments under the teachers retirement program. 1954-56 Op. Att’y Gen. p. 605.

Pre-1966 member establishes out-of-state service credit by paying. — Teacher who became a member of the retirement system prior to April 1, 1966, and who is otherwise

entitled to credit for out-of-state teaching service, may establish such credit by paying to the system 8 percent of the out-of-state compensation received, plus accumulated interest. The result is the same even though such a teacher retires, begins receiving benefits, and again becomes a member of the retirement system after April 1, 1966, because all that is required is that the teacher, at some time, became a member of the system prior to April 1, 1966. 1975 Op. Att’y Gen. No. 75-25.

47-3-127.1. Employment of retired teacher as full-time teacher or in other capacities.

(a) As used in this Code section, the term:

(1) “Classroom teacher” means a certified teacher of pre-kindergarten through grade 12 employed by the public schools who has as his or her sole responsibility the academic instruction of students in a classroom.

(2) “Normal service retirement” means retirement at or after the age of 60 with at least ten years of creditable service or retirement with 30 years of creditable service without regard to age.

(3) “Retired teacher” means a beneficiary of this retirement system who has been retired on a normal service retirement for at least 12 calendar months.

(b)(1) A public school system may employ a retired teacher as a full-time classroom teacher, principal, superintendent, media specialist, or counselor, and such person shall be subject to the provisions of subsection (c) of this Code section; provided, however, that a retired teacher who retired as a principal may not be employed as a principal in the same school in which he or she was so employed prior to his or her retirement, and a retired teacher who retired as a school superintendent may not be employed as a school superintendent by the same school system in which such person was so employed prior to his or her retirement.

(2) A regional educational service agency as defined in Code Section 20-2-270 may employ a retired teacher as a full-time improvement specialist, and such person shall be subject to the provisions of subsection (c) of this Code section.

(3) The salary paid to any retired teacher employed under this Code section shall be determined pursuant to an agreement between the retired teacher and the employing school system. No such retired teacher shall receive any further creditable service as a result of such employment and shall in all ways be considered by this retirement system solely as a beneficiary.

(4) A public school system employing a retired teacher subject to this subsection shall pay all employer and employee contributions to this retirement system as otherwise provided in this chapter; provided, however, that no such retired teacher shall receive any further creditable service as a result of such employment and shall in all ways be considered by this retirement system solely as a beneficiary.

(c) Any other provision of this article to the contrary notwithstanding, a retired teacher may return to service as a classroom teacher, principal, superintendent, media specialist, or counselor, and such retired teacher's benefits under this article shall not be affected. Any such retired teacher so employed shall not be considered an active member of this retirement system and shall not accrue any additional benefits or further creditable service as a result of such employment and shall in all ways be considered by this retirement system solely as a beneficiary. The provisions of this subsection shall not become a part of the employment contract and shall be subject to future legislation.

(d) The provisions of this Code section shall be automatically repealed on June 30, 2016. (Code 1981, § 47-3-127.1, enacted by Ga. L. 2002, p. 585, § 3; Ga. L. 2003, p. 139, § 1; Ga. L. 2004, p. 107, § 22; Ga. L. 2004, p. 1061, § 1; Ga. L. 2005, p. 533, § 1/HB 495; Ga. L. 2008, p. 1094, § 1/SB 327; Ga. L. 2009, p. 368, § 1/SB 48.)

The 2008 amendment, effective July 1, 2008, in paragraph (a)(1), substituted "sole" for "primary"; added paragraph (a)(2); redesignated former paragraph (a)(2) as present paragraph (a)(3); in paragraph (a)(3), substituted "has been" for "was", inserted "normal", and substituted "for at least 12 calendar months" for "on December 31, 2003"; in the first sentence of paragraph (b)(1), inserted "media specialist, or" and deleted "librarian, or improvement specialist" following "counselor"; in paragraph (b)(3), substituted "determined pursuant to an agreement between the retired teacher and the employing school system" for "commensurate with the position and the individual's qualifications. Retired teachers paid under this Code section shall be

reported to the state at the certificate and experience level at which the teacher is assigned"; in paragraph (b)(4), inserted "and employee"; in subsection (c), inserted "media specialist, or" and deleted "librarian, or improvement specialist," following "counselor,"; and added subsection (d).

The 2009 amendment, effective April 30, 2009, part of an Act to revise, modernize, and correct this title, revised punctuation in paragraphs (b)(1) and (b)(2).

Law reviews. — For note on the 2002 enactment of this Code section, see 19 Ga. St. U.L. Rev. 301 (2002).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, a colon was added at the end of the introductory language of subsection (a).

47-3-128. Payment of accumulated contributions upon request after termination of membership; payment of taxable portion to eligible retirement plan.

If a person's membership ceases other than by death or retirement from this retirement system, the amount of his or her accumulated contributions to this retirement system shall be payable to the member upon such

person's request after the date the person has terminated employment with a school system, institution of higher learning, or agency covered by this retirement system. The board of trustees shall allow a person requesting such payment of accumulated contributions to elect to have the taxable portion of such payment made directly to an eligible retirement plan as defined in the federal Internal Revenue Code. (Ga. L. 1943, p. 640, § 5; Ga. L. 1964, p. 669, § 2; Ga. L. 1966, p. 513, § 3; Ga. L. 1969, p. 388, § 3; Ga. L. 1971, p. 620, § 2; Ga. L. 1993, p. 732, § 1; Ga. L. 2005, p. 535, § 15/HB 460.)

OPINIONS OF THE ATTORNEY GENERAL

Cannot withdraw contributions upon employment with local retirement fund. — Member may not withdraw contributions upon entering employment of employer operating a local retirement fund. 1970 Op. Att'y Gen. No. 70-80.

Teachers with out-of-state credit may, upon reemployment, reestablish credit. — Teachers who establish out-of-state service

credit and subsequently withdraw from the retirement system may, upon reemployment as teachers in Georgia, reestablish such service credit by paying into the system the amount of the withdrawn contributions, plus interest. 1973 Op. Att'y Gen. No. 73-45.

47-3-129. Rights when retire before 60 with ten years of service or 20 years before 1954; reestablishment of credits earned before that retirement.

(a) Any other provisions of this chapter to the contrary notwithstanding, the right to the service retirement benefit under this chapter shall vest in a member who withdraws from service prior to attaining 60 years of age, provided that he has completed at least ten years of creditable service and has not withdrawn his contributions. Such member shall, upon filing an application as provided in this chapter, become entitled to service retirement benefit upon his attainment of the age of 60 or at his option at any date subsequent thereto. The service retirement benefit of any such member shall be as set forth in this chapter, based on the total credits accrued at the date of his withdrawal from service; or, if such member should die before filing such application, the maximum benefits payable shall be limited to the member's accumulated contributions at the time of his withdrawal from service; and nothing in this chapter shall be construed as providing for any benefits prior to attaining age 60, other than a return of the contributions in case of death. Any other provisions of this chapter to the contrary notwithstanding, this Code section shall inure retroactively to the benefit of all members who completed at least 20 years' creditable service prior to January 1, 1954, and who have not withdrawn their contributions.

(b) If a member returns to active service in the public schools or the University System of Georgia for one year or more prior to age 60, he may reestablish such credits that he had at the time he withdrew from active

service and such credits in which he had a vested right to a service retirement benefit under this Code section by paying a fee of 25 percent of his last annual salary prior to freezing his credits or the applicable accrued regular interest on his annuity account from the date of freezing to date of payment, whichever is greater. (Ga. L. 1958, p. 690, § 1; Ga. L. 1961, p. 352, § 1; Ga. L. 1963, p. 542, § 3; Ga. L. 1973, p. 784, § 1; Ga. L. 1974, p. 1023, §§ 1, 7; Ga. L. 1977, p. 825, § 5; Ga. L. 2000, p. 131, § 1.)

47-3-130. Commencement of benefits under this retirement system; retirement after January 1, 1943, but before the commencement date.

No member shall retire or receive benefits under this retirement system prior to the commencement date; but any person eligible for service retirement or disability benefits after January 1, 1943, and prior to the commencement date shall be entitled to the benefits provided by this chapter, even though he is not a teacher on the commencement date. (Ga. L. 1943, p. 640, § 5.)

ARTICLE 8

MISCELLANEOUS PROVISIONS

47-3-140. Application of other state funded pension or retirement benefits to members and beneficiaries of this retirement system.

Except as specifically provided in this chapter, no other provision of law which provides wholly or partly at the expense of this state for pensions or retirement benefits for teachers in the state, their surviving spouses, or their dependents shall apply to members or beneficiaries of this retirement system, their surviving spouses, or their dependents, provided that nothing in this chapter shall prevent the governing boards of the public school systems of the state and the Board of Regents of the University System of Georgia from making provision for supplementing the retirement and pension allowances of members of the retirement system. (Ga. L. 1943, p. 640, § 13; Ga. L. 1949, p. 1197, § 2; Ga. L. 1981, p. 698, § 1.)

Cross references. — Authority of governing boards of public school systems and board of regents to provide supplemental retirement and pension allowances, §§ 20-1-2, 20-1-4.

OPINIONS OF THE ATTORNEY GENERAL

University system may enter into tax-sheltered annuity plans. — Regents of the university system may authorize the units of the university system to enter into tax-sheltered annuity plans for its employees, and such annuities cannot be considered

gratuities under the Constitution. 1965-66 Op. Att'y Gen. No. 65-69.

Supplemental retirement plan at Medical College of Georgia. — It is within the authority of the Board of Regents to establish a supplemental retirement plan at the Medical

College of Georgia. 1999 Op. Att’y Gen. No. U99-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182, et seq., 1231.
C.J.S. — 78 C.J.S., Schools and School Districts, § 481 et seq.

ALR. — Validity of legislation providing for additional retirement or disability allowances for public employees previously retired or disabled, 27 ALR2d 1442.

47-3-141. Attempts to defraud the retirement system by means of false statements or falsified records; adjustment of erroneous payments.

(a) Any person who knowingly makes any false statements or falsifies or permits to be falsified any records of the retirement system in any attempt to defraud the retirement system, as a result of such act, shall be guilty of a misdemeanor and on conviction shall be punished by a fine not exceeding \$500.00, imprisonment not exceeding 12 months, or both.

(b) If any change or error in the records of the retirement system results in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall have the power to correct such error and to adjust the payments as far as practicable in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (Ga. L. 1943, p. 640, § 11.)

JUDICIAL DECISIONS

Reduction in future benefits constitutional. — Since there is no vested right to benefits one was never entitled to receive, the reduction in future benefits to retiree did not violate the retiree’s constitutional right to protection against impairment of contract. *Tate v. Teachers’ Retirement Sys.*, 257 Ga. 365, 359 S.E.2d 649 (1987).
Benefits conferred on education association’s secretary reviewable. — Subsection

(b) of O.C.G.A. § 47-3-141 provides for correction of errors which result in payment of benefits which are less or greater than a member or beneficiary is entitled to receive, and thus implicitly authorizes the retirement system to review benefits conferred on the former executive secretary emeritus of the Georgia Association of Educators. *Tate v. Teachers’ Retirement Sys.*, 257 Ga. 365, 359 S.E.2d 649 (1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 309. 70 C.J.S., Pensions, § 12. 78 C.J.S., Schools and School Districts, § 346.

47-3-142. Rights and benefits of persons convicted of murder, voluntary manslaughter, or conspiracy to commit either upon a member or retiree.

No person who commits or conspires to commit the murder or voluntary manslaughter of a member or retiree shall receive any refund of contributions or retirement benefits under this chapter upon the death of the member or retiree, even though the person so killing or conspiring is the named beneficiary for such refund of contributions or retirement benefits. A plea of guilty or a judicial finding of guilt, not reversed or otherwise set aside as to any of such crimes, shall be prima-facie evidence of guilt in determining rights under this chapter. All right, interest, and entitlement to any such refund of contributions or retirement benefits shall go to the secondary beneficiary designated by the member or retiree, if the secondary beneficiary is living, upon the death of the member or retiree, otherwise to the member's or retiree's estate. (Ga. L. 1979, p. 918, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1224 et seq.	Employees, § 316 et seq. 78 C.J.S., Schools and School Districts, § 485.
C.J.S. — 67 C.J.S., Officers and Public	

CHAPTER 4

PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM

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47-4-2.	Definitions.		Plan year designated.
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from state and local taxes and from legal process; restriction on assignability.

Article 7

Miscellaneous Provisions

- 47-4-120. Exemption of rights and benefits

Cross references. — Health insurance plans for retired public school employees, Ga. Const. 1983, Art. III, Sec. VI, Para. VI. Authorization for creation of retirement system for employees of public schools, Ga. Const. 1983, Art. III, Sec. X, Para. III. Health

care plans for public school employees, § 20-2-910 et seq. Reimbursement of Department of Law by Employees' Retirement System of Georgia, Teachers Retirement System of Georgia, for legal services, § 45-15-37.

OPINIONS OF THE ATTORNEY GENERAL

Increased benefits not applicable when no service or contributions. — Georgia Const. 1976, Art. X, Sec. I, Para. V (see Ga. Const. 1983, Art. III, Sec. X, Para. II) ought not to be applied to persons who neither render

services as public school employees nor make the required contributions to the retirement system. 1971 Op. Att'y Gen. No. 71-73.

RESEARCH REFERENCES

ALR. — Reasonableness of classification, as regards beneficiaries, by statute providing for retirement fund or pension for public officers or employees, 163 ALR 870.

Gift to or for employees' pension fund as valid charitable gift or trust, 28 ALR2d 428.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan, 50 ALR3d 880.

ARTICLE 1

GENERAL PROVISIONS

47-4-1. Short title.

This chapter shall be known and may be cited as the "Public School Employees Retirement System Act." (Ga. L. 1969, p. 998, § 1.)

47-4-2. Definitions.

As used in this chapter, the term:

(1) “Accumulated contributions” means the sum of all of the amounts deducted from the earnable compensation of a member and paid by the member to establish or reestablish credit for service, which amounts are credited to the member’s individual account in this retirement system, together with regular interest thereon.

(2) “Actuarial equivalent” means a benefit of equal value when computed at regular interest upon the basis of the mortality tables adopted by the board.

(3) “Beneficiary” means the living person or persons who are entitled to receive any benefits upon the death of a member and who were designated by the member by written notice to the board. If the person or persons so designated are not living at the time of the death of the member, the beneficiary shall be the estate of the member.

(4) “Board” means the board of trustees established under Code Section 47-4-22 to administer the retirement fund and which is authorized to manage and control the retirement system.

(5) “Commencement date” means July 1, 1970, or as soon thereafter as the board shall determine for the commencement of employer and employee contributions.

(6) “Contributions” means the employer and employee contributions to the retirement system provided for in Code Section 47-4-60.

(7) “Creditable service” means all years and completed months (expressed as a fraction of a year) of prior service and membership service.

(8) Reserved.

(9) “Early retirement date” means the date of retirement under subsection (b) of Code Section 47-4-100.

(10) “Employer” means the State of Georgia.

(11) “Fund” means the Public School Employees Retirement Fund created by this chapter.

(12) “Joint annuitant” means the person designated to receive benefits payable on the death of a member, as provided in Option A.

(13) “Local unit of administration” means any county or independent board of education or political subdivision employing public school employees.

(14) “Member” means any public school employee in the membership of the retirement system.

(15) “Membership service” means service which is rendered as a public school employee while a member of the retirement system and for which credit is allowable under Code Section 47-4-80.

(16) “Normal retirement date” means the date of retirement under subsection (a) of Code Section 47-4-100.

(17) “Option A” and “Option B” mean the optional forms set forth in Code Section 47-4-102 in which a member may elect to receive his retirement benefits.

(18) “Prior service” means service which is rendered as a public school employee prior to the commencement date and for which credit is allowable.

(19) “Public school” means any day school conducted within the state under the authority and supervision of a duly elected or appointed county or independent board of education.

(20) “Public school employee” or “employee” means all those employees of public schools including postsecondary vocational-technical schools governed by the Technical College System of Georgia who are not eligible for membership in the Teachers Retirement System of Georgia or the Employees’ Retirement System of Georgia. The term specifically includes, but is not limited to, school bus drivers, school lunchroom personnel, school maintenance personnel, and school custodial personnel. The term does not include teachers or any school personnel who are now, or may hereafter become, covered by the Teachers Retirement System of Georgia or the Employees’ Retirement System of Georgia, any person on the payroll of a third party with whom an employer has contracted for the provision of such person’s services, or any person classified by an employer as other than a common law employee for federal tax purposes, even if a court or administrative agency determines that such person is a common law employee and not an independent contractor for federal tax purposes. Certain public school employees, as defined in this paragraph, shall have the option to become members of the Teachers Retirement System of Georgia in accordance with subsection (d) of Code Section 47-4-40 or to become members of the Employees’ Retirement System of Georgia in accordance with subsection (e) of Code Section 47-4-40, and except as provided by such subsections, any public school employee becoming a member of the Teachers Retirement System of Georgia or the Employees’ Retirement System of Georgia shall cease to be a member of the retirement system created by this chapter.

(21) “Regular interest” means compound interest at such rate as shall be determined by the board from time to time, and initially to be set at 4 percent.

(22) “Retirement system” means the Public School Employees Retirement System created by this chapter.

(23) “Service” means service rendered as a public school employee. (Ga. L. 1969, p. 998, § 2; Ga. L. 1976, p. 577, § 1; Ga. L. 1987, p. 575,

§ 11; Ga. L. 1988, p. 1742, § 5; Ga. L. 1989, p. 52, § 1; Ga. L. 2005, p. 535, § 16/HB 460; Ga. L. 2008, p. 562, § 1/SB 434; Ga. L. 2009, p. 947, § 20/HB 202; Ga. L. 2010, p. 1207, § 48/SB 436.)

The 2008 amendment, effective July 1, 2008, substituted “Technical College System of Georgia” for “Department of Technical and Adult Education” in the first sentence of paragraph (20).

The 2009 amendment, effective May 11, 2009, substituted “the sum of all of the amounts deducted from the earnable compensation of a member and paid by the member to establish or reestablish credit for service, which amounts are credited to the member’s individual account in this retirement system” for “an employee’s contributions” near the middle of paragraph (1).

The 2010 amendment, effective July 1, 2010, substituted “Reserved.” for the former provisions of paragraph (8), which read: “‘Delayed retirement date’ means the date of retirement under subsection (b) of Code Section 47-4-100.”; and substituted “subsection (b)” for “subsection (d)” in the middle of paragraph (9).

Editor’s notes. — Ga. L. 2005, p. 535,

§ 16, which amended this Code section, purported to amend Code Section 47-4-1 but actually amended Code Section 47-4-2.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

JUDICIAL DECISIONS

Cited in *Fulton County Sch. Dist. v. Sanders*, 242 Ga. 298, 248 S.E.2d 670 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Teacher’s aide meeting statutory requirements eligible for coverage. — If a teacher’s aide or paraprofessional meets the requirements set forth by Ga. L. 1971, p. 226, § 1 (see O.C.G.A. § 47-3-1), paragraph (20) of Ga. L. 1969, p. 998, § 2 (see O.C.G.A. § 47-4-2), and Ga. L. 1969, p. 998, § 4 (see O.C.G.A. § 47-4-40), then that person is eligible for coverage under the retirement system. 1971 Op. Att’y Gen. No. 71-189.

Service as a county school bus driver which is not and will not be included as membership service or credit within the Teachers Retirement System may be allowed as creditable service under the Public School Employees Retirement System. 1982 Op. Att’y Gen. No. 82-76.

RESEARCH REFERENCES

ALR. — What constitutes “salary,” “wages,” “pay,” or the like, within pension law basing benefits thereon, 91 ALR5th 225.

ARTICLE 2

CREATION, ADMINISTRATION, AND MANAGEMENT OF THE
ASSETS OF THE RETIREMENT SYSTEM

Administrative rules and regulations. — State of Georgia, Public School Employees Rules of General Applicability, Official Compilation of the Rules and Regulations of the Retirement System, Chapter 513-2-1.

47-4-20. Creation and administration of the retirement system; corporate powers and privileges; rights in actions; name under which retirement system business shall be transacted.

There is created a retirement system which shall be placed under the management and control of the board for the purposes of providing retirement benefits and other benefits under this chapter for public school employees. It shall be a budget unit of the state government and shall have the power and privileges of a corporation and the right to bring and defend actions and to implead and be impleaded. It shall be known as the "Public School Employees Retirement System," and by such name all of its business shall be transacted, all of its funds shall be invested, and all of its cash, securities, and other property shall be held. (Ga. L. 1969, p. 998, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182. **C.J.S.** — 67 C.J.S., Officers and Public Employees, § 313. 78 C.J.S., Schools and School Districts, § 264 et seq.

47-4-21. Creation and administration of the retirement fund.

There is created the Public School Employees Retirement Fund, which shall be administered by the board. (Ga. L. 1969, p. 998, § 11.)

47-4-22. Membership of the board; expenses and per diem; quorum for the transaction of business; chairman, secretary, and treasurer of the board.

(a) The board shall be composed of all members of the Board of Trustees of the Employees' Retirement System of Georgia and two additional members appointed by the Governor. The first two members appointed by the Governor shall be appointed to take office on July 1, 1984. One of such members shall be appointed for an initial term of two years and the other for an initial term of four years and until their successors are appointed and qualified. Thereafter, successors shall be appointed to take office on the date of the expiration of the respective terms of office for terms of four years and until their successors are appointed and qualified. In the event of a vacancy for any reason in the membership of the board

appointed by the Governor, the Governor shall appoint a person to fill the vacancy for the unexpired term.

(b) The members of the board shall each receive \$20.00 per day for each day of attending meetings of the board or for any committee meetings called pursuant to authorization of the board and for time spent in necessary travel. The trustees shall be reimbursed for all actual traveling and other expenses necessarily incurred through service on the board. State officials serving on the board shall receive no per diem but shall be entitled to reimbursement for actual expenses incurred by them in carrying out their duties under this chapter.

(c) Six members at any meeting of the board shall constitute a quorum to transact business. Each member shall be entitled to one vote and five votes shall be necessary for a decision by the board.

(d) The chairman, secretary, and treasurer of the board shall be the same as the chairman, director, and treasurer of the Board of Trustees of the Employees' Retirement System of Georgia. (Ga. L. 1969, p. 998, § 11; Ga. L. 1971, p. 416, § 1; Ga. L. 1981, p. 633, § 1; Ga. L. 1984, p. 827, § 1.)

Editor's notes. — Ga. L. 1984, p. 827, § 2, not codified by the General Assembly, provides: "The membership of the Board of Trustees of the Public School Employees Retirement System, except for the membership thereof consisting of the membership of the Board of Trustees of the Employees' Retirement System of Georgia, existing on June 30, 1984, shall stand abolished on July 1, 1984."

Ga. L. 1984, p. 827, § 3, provided that that Act, which amended this Code section, would become effective July 1, 1984, except that it would become effective upon the date of the Governor's approval (March 28, 1984) for the administrative purpose of allowing the Governor to consider persons for appointment pursuant to revised subsection (a).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1182, 1244.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 78 C.J.S., Schools and School Districts, § 264 et seq.

47-4-23. Exemption of members of the board from liability for their acts, omissions, and conduct; indemnification of members of the board.

The members of the board, and each of them, shall be free from all liability, joint or several, for their acts, omissions, and conduct and for the acts, omissions, and conduct of their duly constituted agents in the administration of the retirement system and the fund. The state shall indemnify and save them, and each of them, harmless from the effects and consequences of their acts, omissions, and conduct in their official capacity, except to the extent that such effects and consequences shall result from their own willful misconduct. (Ga. L. 1969, p. 998, § 16.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. **C.J.S.** — 81A C.J.S., States, § 228 et seq.

47-4-24. Legal adviser of the board.

The Attorney General shall be the legal adviser of the board. (Ga. L. 1969, p. 998, § 17; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “adviser” for “advisor” near the end.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 10. **C.J.S.** — 7A C.J.S., Attorney General, § 26 et seq. 81A C.J.S., States, § 532.

47-4-25. Powers and duties of the board.

(a) The board is given the following powers and duties:

- (1) To provide for the collection of all money provided for in this chapter;
- (2) To provide for the payment of all administrative expenses;
- (3) To hear and decide all applications for retirement benefits under this chapter;
- (4) To provide for the payment of all retirement benefits that may be determined to be due under the rules and regulations adopted by the board;
- (5) To make and promulgate all necessary rules and regulations not inconsistent with the laws of this state in order to carry out this chapter;
- (6) To determine eligibility of persons to receive retirement benefits under this chapter;
- (7) To make provisions for refunds or repayments to persons who may be entitled to receive them; and
- (8) To keep records of all its meetings.

(b) The board shall also have all other powers necessary for the proper administration of this chapter. (Ga. L. 1969, p. 998, § 13.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. **Employees,** § 313. 78 C.J.S., Schools and School Districts, § 264 et seq. 81A C.J.S., **C.J.S.** — 60 C.J.S., Officers and Public States, § 224 et seq.

47-4-26. Power of board over funds; special account for deposit of funds and payment of benefits and expenses; investment powers; power to employ agents.

(a) The board shall be the trustees of the funds and shall have control of the funds provided for in this chapter and all funds received by the board shall be deposited in a special account to the credit of the Public School Employees Retirement Fund. The benefits under this chapter and all administrative expenses shall be paid from this special account. The board shall have authority to expend the funds in accordance with this chapter.

(b) The board shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the “Public Retirement Systems Investment Authority Law.” Subject to such terms, conditions, limitations, and restrictions, the board shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds are invested, including the proceeds of any investments and any money belonging to the fund.

(c) The board is authorized to employ agents, including, but not limited to, banks or trust departments thereof, and to contract with such agents for their services as investment advisers and counselors in making recommendations for investments, and in making investments if the board so authorizes. (Ga. L. 1969, p. 998, § 12; Ga. L. 1995, p. 651, § 3; Ga. L. 2000, p. 2, § 6; Ga. L. 2005, p. 535, § 17/HB 460; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “advisers” for “advisors” in the middle of subsection (c).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1169 et seq., 1244.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 81A C.J.S., States, § 224 et seq.

47-4-27. Power of board to take, hold, and invest any gift, grant, or bequest.

The board may take any gift, grant, or bequest, any money, any real or personal property, or any other thing of value and hold or invest the same for the uses and purposes of the retirement system, in accordance with this chapter. (Ga. L. 1969, p. 998, § 15.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.
C.J.S. — 78 C.J.S., Schools and School Districts, § 264 et seq. 81A C.J.S., States, § 224 et seq.

47-4-28. Duty of board to keep records of accounts in granting benefits and records of the operations of the board; annual financial statement to the General Assembly.

The board shall keep permanent records of all its accounts in granting retirement benefits and shall keep proper records and books concerning its operation. Each year at the beginning of the regular session of the General Assembly the board shall present an annual financial statement of the fund. (Ga. L. 1969, p. 998, § 14.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 77.
C.J.S. — 81A C.J.S., States, § 373 et seq.

47-4-29. Appropriations for employer contributions; creation of an expense fund; payment prior to commencement date of employer contributions and expenses of retirement system.

(a) The General Assembly shall make appropriations to the retirement system sufficient to provide for the employer contributions required by subsection (b) of Code Section 47-4-60 and to otherwise carry out this chapter.

(b) The board shall establish an expense fund to which shall be credited the funds provided by appropriations of the General Assembly in order to pay the administrative expense of the retirement system and from which shall be paid all expenses incurred in the administration and operation of the retirement system.

(c) The appropriations provided for in this Code section may be made by the general or supplemental appropriations Acts adopted by the General Assembly but no employer or employee contributions to the retirement system shall be made prior to the commencement date. Appropriated funds may be expended prior to the commencement date, pursuant to subsection (b) of this Code section, in order to pay the expenses of setting up and beginning operation of the retirement system prior to that date. (Ga. L. 1969, p. 998, § 19.)

RESEARCH REFERENCES

<p>Am. Jur. 2d. — 60 Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq. 63C Am. Jur. 2d, Public Funds, § 33 et seq.</p>	<p>C.J.S. — 78 C.J.S., Schools and School Districts, § 264 et seq. 81A C.J.S., States, § 213 et seq.</p>
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47-4-30. Plan year designated.

For purposes of complying with federal Internal Revenue Service rules and regulations, the plan year for this retirement system shall be the 12 month period beginning on July 1 of each year. (Code 1981, § 47-4-30, enacted by Ga. L. 2009, p. 947, § 21/HB 202.)

Effective date. — This Code section became effective May 11, 2009.

ARTICLE 3

MEMBERSHIP IN THE RETIREMENT SYSTEM

47-4-40. Eligibility; leaves of absence; termination; transfer of service credits.

(a) Any person who is a public school employee on January 1, 1970, shall be a member of the retirement system as a condition of his continued employment, except as provided in this Code section. Any person who becomes a public school employee on or after January 1, 1970, shall become a member of the retirement system as a condition of his employment. This subsection shall become a part of any contract of employment of public school employees which is executed on or after January 1, 1970, but nothing in this Code section shall be construed to impair the obligation of any such contract executed prior to January 1, 1970.

(b) An otherwise eligible public school employee shall be classified as a member only while he is employed by a local unit of administration which is not operating a local retirement system, except as otherwise provided in Code Section 47-4-41.

(c) The membership of any member shall terminate if he retires under this retirement system or withdraws his contributions. Any member who has

not withdrawn his contributions to the retirement system may retain his membership while on any leave of absence which is authorized by rules and regulations of the board. The board may continue the membership of a member while in the armed forces of the United States or other emergency wartime service of the United States, which service has been approved in advance by the board, or if he ceases to be a contributing member by reason of illness. No benefit under the retirement system other than the payment of the employee's accumulated contributions shall become payable to him or on his account while he is not in service as a public school employee and no employer contributions shall be made to the retirement system during any such time.

(d) Full-time public school lunchroom, maintenance, or warehouse managers or supervisors, or full-time public school transportation managers or supervisors including those employed by postsecondary vocational-technical schools governed by the Technical College System of Georgia shall have the option of becoming members of the Teachers Retirement System of Georgia, in accordance with Code Section 47-3-63. Any of such personnel who have heretofore exercised said option or who hereafter exercise said option who have or had ten or more years of creditable service under this chapter may withdraw their accumulated contributions from the fund, and upon withdrawing such contributions such personnel shall cease to be members of the retirement system. Said personnel may elect to allow their accumulated contributions to remain in the fund, and such personnel shall retain the vested rights established by Code Section 47-4-100. Upon exercising such option, however, any such personnel shall cease making contributions to the retirement system, and no additional creditable service shall be allowed under the retirement system. Any such person who elects such option and who has less than ten years of creditable service under this chapter shall withdraw the person's accumulated contributions from the fund and, upon exercising such option, such personnel shall cease to be members of the retirement system. Any person subject to this subsection who becomes employed on or after November 1, 1982, shall have the option, which must be exercised within 30 days after becoming employed, of becoming a member of this retirement system or of becoming a member of the Teachers Retirement System of Georgia, provided that any such person who becomes employed by a postsecondary vocational-technical school governed by the Technical College System of Georgia after July 1, 1987, shall exercise such option within one day after becoming so employed. No such person shall be a member of both such retirement systems under any circumstances. Such option shall be exercised by notification, in writing, to the respective boards of trustees of such retirement systems. It shall be the duty and responsibility of local units of administration and postsecondary vocational-technical schools governed by the Technical College System of Georgia to notify their respective employees and persons who become employed in the future and

who are subject to this subsection of the options provided for in this subsection and to furnish such employees appropriate forms for the exercise of such options.

(e) Lunchroom, maintenance, warehouse, or transportation workers employed by postsecondary vocational-technical schools governed by the Technical College System of Georgia, who are otherwise eligible under laws, rules, or regulations, shall have the option of becoming members of the Employees' Retirement System of Georgia, in accordance with Code Sections 20-4-25, 20-4-26, 47-2-1, and 47-2-190. Any of such personnel who have heretofore exercised said option or who hereafter exercise said option who have or had ten or more years of creditable service under this chapter may withdraw their accumulated contributions from the fund, and upon withdrawing such contributions such personnel shall cease to be members of the retirement system. Said personnel may elect to allow their accumulated contributions to remain in the fund, and such personnel shall retain the vested rights established by Code Section 47-4-100. Upon exercising such option, however, any such personnel shall cease making contributions to the retirement system, and no additional creditable service shall be allowed under the retirement system. Any such person who elects such option and who has less than ten years of creditable service under this chapter shall withdraw the person's accumulated contributions from the fund and, upon exercising such option, such person shall cease to be a member of the retirement system. Any person subject to this subsection who becomes employed on or after July 1, 1987, shall have the option, which must be exercised within one day after becoming employed, of becoming a member of this retirement system or of becoming a member of the Employees' Retirement System of Georgia. No such person shall be a member of both such retirement systems under any circumstances. Such option shall be exercised by notification, in writing, to the respective boards of trustees of such retirement systems. It shall be the duty and responsibility of postsecondary vocational-technical schools governed by the Technical College System of Georgia to notify their respective employees and persons who become employed in the future and who are subject to this subsection of the options provided for in this subsection and to furnish such employees appropriate forms for the exercise of such options. (Ga. L. 1969, p. 998, § 4; Ga. L. 1973, p. 1197, § 1; Ga. L. 1976, p. 577, § 2; Ga. L. 1979, p. 884, § 1; Ga. L. 1982, p. 965, § 3; Ga. L. 1987, p. 575, § 12; Ga. L. 1988, p. 1742, § 6; Ga. L. 1989, p. 52, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 2008, p. 562, § 1/SB 434.)

The 2008 amendment, effective July 1, 2008, substituted "Technical College System of Georgia" for "Department of Technical

and Adult Education" three times in subsection (d) and twice in subsection (e).

OPINIONS OF THE ATTORNEY GENERAL

Teacher's aide meeting statutory requirements eligible for coverage. — If a teacher's aide or paraprofessional meets the requirements set forth by Ga. L. 1971, p. 226, §§ 3 and 4 (see O.C.G.A. §§ 47-3-1, 47-4-2(20), and 47-4-40), then that person is eligible for coverage under the retirement system. 1971 Op. Att'y Gen. No. 71-189.

Application when withdraw contributions and later seek to reestablish service. — Ga. L. 1979, p. 884, §§ 1 and 2 (see O.C.G.A. §§ 47-4-40 and 47-4-104) apply only to former retirement system members who

withdraw contributions from the system and later seek to reestablish those withdrawn contributions and the service those contribution represent. 1979 Op. Att'y Gen. No. 79-57.

Cooperative Educational Service employees not members. — Employees who are employed and paid solely by a Cooperative Educational Service Agency are not entitled to membership in the Public School Employees Retirement System. 1981 Op. Att'y Gen. No. 81-52.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1174 et seq., 1252.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 78 C.J.S., Schools and School Districts, § 264 et seq.

47-4-41. Membership of persons employed by local units of administration which operate local retirement systems.

(a) Any local unit of administration which has a retirement or pension system on January 1, 1970, and which includes as members in such system any or all public school employees may elect to have such employees become members of the retirement system created by this chapter subject to the following conditions:

(1) Any such local unit of administration must make the election as to whether or not any or all of its public school employees covered by its local retirement or pension system shall become members of the retirement system created by Code Section 47-4-20, and such election must be made in writing to the board by April 1, 1970; and

(2) If any such local unit of administration elects to have any or all of its public school employees become members of the retirement system created by Code Section 47-4-20 then, at a time to be specified by the board, such employees shall cease to be members of the local retirement or pension system and shall become members of this retirement system. Upon retirement, all service credited to such employees under the local retirement or pension system shall be creditable service; and such employees shall receive retirement benefits under this chapter. The transfer of any such public school employee from any local retirement or pension system to this retirement system shall not impair or diminish any pension or retirement rights of any such employee existing under the local retirement or pension system at the time of such transfer; and in order to carry out this requirement, the local unit of administration shall pay to the board, in such manner and at such time or times as the board

shall specify, an amount which shall be of sufficient actuarial value to secure the pension or retirement rights any such employee had under the local retirement or pension system. Upon retirement, such employee shall receive a retirement benefit equivalent in actuarial value to the retirement or pension benefit which he would have received under the local system, notwithstanding the retirement benefits otherwise set forth in this chapter.

(b) Any local unit of administration which has such a retirement or pension system shall be responsible for the payment of any retirement or pension benefits payable to any member of the local retirement or pension system who had retired under such local system prior to the commencement date.

(c) The board is authorized and directed to develop and promulgate rules and regulations to carry out this Code section. (Ga. L. 1969, p. 998, § 18; Ga. L. 2000, p. 131, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1174, 1183, 1229 et seq., 1252.	C.J.S. — 78 C.J.S., Schools and School Districts, § 264 et seq. 81A C.J.S., States, § 211 et seq.
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ARTICLE 4

EMPLOYEE AND EMPLOYER CONTRIBUTIONS TO THE RETIREMENT SYSTEM

47-4-60. Amount of contributions; manner of payment.

(a) Each member shall contribute \$4.00 monthly as the employee contribution toward the cost of the retirement system. Each local unit of administration shall deduct such amount each month from the compensation of each of its employees who is a member of the retirement system and pay the amounts so deducted to the board. The board shall specify by rules and regulations the time and manner such amounts shall be paid to it.

(b) The employer contributions toward the cost of the retirement system shall be as actuarially determined and approved by the board; and, in making such determination, each local unit of administration shall supply the board with such information at such times and in such manner as the board shall specify by rules and regulations. The amounts determined as the employer contributions shall be certified to the state treasurer at such times as the board shall specify by rules and regulations. It shall be the duty of the state treasurer to pay to the board, from funds appropriated or otherwise available to the retirement system, the amounts so certified by the board. All employer contributions shall be irrevocable and may be used only for the exclusive benefit of members or their beneficiaries. (Ga. L.

1969, p. 998, § 10; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the second and third sentences of subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 78 C.J.S., Schools and School Districts, § 264 et seq.

47-4-61. **Date for start of employee contributions.**

No public school employee shall be obligated to make employee contributions to the retirement system until July 1, 1970, under subsection (a) of Code Section 47-4-29. (Ga. L. 1969, p. 998, § 23.)

ARTICLE 5

SERVICE CREDITABLE TOWARD RETIREMENT

Administrative rules and regulations. — State of Georgia, Public School Employees Rules of General Applicability, Official Compilation of the Rules and Regulations of the Retirement System, Chapter 513-2-1.

47-4-80. **Determination of membership service; prior service credit and prior service certificate; creditable service; credit for membership in Teachers Retirement System.**

(a) The board shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of membership service, but in no case shall more than one year of service be creditable for all service in one calendar year. In developing rules and regulations to determine how much service in any year is equivalent to one year of membership service, the board shall be guided by the nature of the employment being considered and the number of months, weeks, days, and hours normally worked to carry out the normal duties associated with the employment. Service rendered for a regular school year shall be equivalent to one year of service in any case.

(b) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him or her since he last became a member and, if he or she has a prior service certificate in full force and effect, the amount of the service certified on his or her prior service certificate.

(c) Any person who leaves public school employment at any time after January 1, 1970, to enter military service may return to public school

employment at any time within five years after being released from military service and shall receive credit for such active military service upon the payment of employee contributions which would have been paid during his or her absence while in military service, plus the regular interest that would have accrued on such contributions.

(d) Any member who was a member of the Teachers Retirement System of Georgia because the member held a position which required membership in that retirement system and who, during membership in said teachers retirement system, also held a position as a public school employee for which creditable service under this retirement system has not been obtained shall have the right to obtain credit for such prior service as a public school employee by paying to the board of trustees the employee contributions that would have been paid to this retirement system during the period of such prior service plus regular interest thereon compounded annually from the time the prior service was rendered until the date of payment. Any member wishing to obtain credit for prior service under this subsection shall apply therefor to the board of trustees. (Ga. L. 1969, p. 998, § 5; Ga. L. 1974, p. 1242, § 1; Ga. L. 1975, p. 1490, § 1; Ga. L. 1977, p. 311, § 1; Ga. L. 1981, p. 1888, § 1; Ga. L. 1988, p. 638, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 2010, p. 1207, § 49/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted former subsection (b), which read: “Under such rules and regulations as the board shall adopt, each member who was a public school employee at any time from July 1, 1945, until the commencement date shall be entitled to file a detailed statement of all services as a public school employee rendered by him prior to the commencement date and for which he claims credit. If any person who would otherwise have qualified under this subsection is on leave in the armed forces of the United States, such person shall have six months after termination of his military service to qualify under this subsection for prior service credit. Upon verification of such statement of service, the board shall issue a prior service certificate based on the member’s statement of service and certifying to the member the period of service prior to the commencement date with which he is credited. As long as a membership continues, a prior service certificate shall be final and conclusive proof of such service for retirement purposes. A member may within one year from the date of issuance or modification of his prior service certificate request the board to modify or correct such certificate. When membership ceases, such prior service certificate

shall become void.”; redesignated former subsections (c) and (d) as present subsections (b) and (c), respectively; in present subsection (b), inserted “or her” twice and inserted “or she” near the middle; deleted former subsections (e) through (i); and redesignated former subsection (j) as present subsection (d).

Cross references. — Creditable service not allowed for military service from which discharge was other than honorable, § 47-1-11.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be sub-

ject to the statutory provisions in effect on June 30, 2010.”

OPINIONS OF THE ATTORNEY GENERAL

May establish credit for prior service with local board. — Public school employee is entitled to establish credit under the retirement system pursuant to the provisions of this statute for prior service with a local board of public education; the employee

must comply with the provisions as to age, length of service, and the specified time during which the prior service must have been performed. 1979 Op. Att’y Gen. No. 79-57 (see O.C.G.A. § 47-4-80).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1168, 1192 et seq., 1226 et seq., 1231.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 78 C.J.S., Schools and School Districts, § 264 et seq.

ALR. — Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes, 6 ALR2d 506.

47-4-81. Effect of appropriations on credit for prior service.

Any provision of this chapter to the contrary notwithstanding, no credit shall be given any member for prior service until the General Assembly appropriates funds to amortize the prior service liability. (Ga. L. 1969, p. 998, § 24.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1192 et seq., 1229 et seq., 1231.

C.J.S. — 81A C.J.S., States, § 216 et seq.

ARTICLE 6

RETIREMENT, RETIREMENT ALLOWANCES, AND DISABILITY BENEFITS

Administrative rules and regulations. — Rules of General Applicability, Official Compilation of the Rules and Regulations of the

State of Georgia, Public School Employees Retirement System, Chapter 513-2-1.

47-4-100. Normal, early, and delayed retirement; vesting of right to a retirement benefit.

(a) The normal retirement date of a member shall be the first day of the month coinciding with or next following the date he or she reaches the age of 65, except that the normal retirement date of a member who is age 64 or over on January 1, 1970, shall be January 1, 1971. A member shall retire on

his or her normal retirement date except as otherwise provided in subsection (c) of this Code section.

(b) The early retirement date of a member shall be the first day of the month coinciding with or next following the date he or she attains the age of 60. A member may elect to retire at his or her early retirement date and receive the retirement benefit provided by subsection (d) of Code Section 47-4-101.

(c) The right to a retirement benefit under this chapter shall vest in a member who has ten or more years of creditable service if the member has not withdrawn the member's contributions. Except as otherwise provided in Article 2 of Chapter 1 of this title, a member's accumulated contributions shall be 100 percent vested and nonforfeitable at all times. A member shall be 100 percent vested in all benefits under the plan upon attainment of normal retirement age. Upon attaining the member's normal retirement age or the member's early retirement age, the member shall begin receiving the appropriate retirement benefit provided by Code Section 47-4-101. (Ga. L. 1969, p. 998, § 6; Ga. L. 1971, p. 917, § 1; Ga. L. 1973, p. 1197, §§ 2, 3; Ga. L. 2000, p. 131, § 1; Ga. L. 2009, p. 947, § 22/HB 202; Ga. L. 2010, p. 1207, § 50/SB 436.)

The 2009 amendment, effective May 11, 2009, in subsection (e), throughout the subsection, substituted "the member" for "he" and substituted "the member's" for "his", and added the second and third sentences.

The 2010 amendment, effective July 1, 2010, inserted "or she" or "or her" in subsections (a) and (b); substituted "subsection (c)" for "subsections (b) through (e)" in the last sentence of subsection (a); deleted former subsections (b) and (c), which read: "(b) At the request of his local unit of administration, a member may remain actively employed beyond his normal retirement date on a year-to-year basis as shall be mutually agreed upon by the member and his local unit of administration. In such cases, the member shall retire on the first day of the month coinciding with or next following the end of the last agreed upon period of employment, which date shall be the delayed retirement date of the member.

"(c) Any person who was a public school employee for a period of ten or more years at any time after July 1, 1945, and who on April 14, 1971, had attained age 60 or over shall be eligible for membership and may retire. The effective date of such individual's retirement shall be the first day of the first month which occurs at least 30 days after

receipt of his application for retirement by the board of trustees. Such effective date shall be the early retirement date of the member."; redesignated former subsections (d) and (e) as present subsections (b) and (c), respectively; and substituted "The early" for "Except as provided in subsection (c) of this Code section, the early" at the beginning of present subsection (b).

Editor's notes. — Ga. L. 1988, p. 885, § 1, which would have amended subsection (a) of this Code section, was not concurrently funded as required by § 47-20-50 and, therefore, did not become law and was repealed on July 1, 1988. See the state auditor's report at Ga. L. 1988, p. CCLXXXIV. This Act was subsequently repealed by Ga. L. 1989, p. 250, § 1, effective March 30, 1989.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized

and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

RESEARCH REFERENCES

<p>Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.</p> <p>C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.</p>	<p>ALR. — Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.</p>
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47-4-101. Retirement benefits payable upon normal, early, or delayed retirement.

(a) Any member may retire and upon application to the board receive the retirement benefits set forth in this Code section after obtaining a minimum of ten years of creditable service. The effective date of retirement shall be the first of the month in which the application is received by the board, provided that no retirement application will, in any case, be effective earlier than the first of the month following the final month of the applicant’s employment. If a member retires before obtaining ten years of creditable service, he or she shall receive a lump sum refund of his or her accumulated contributions made under the retirement system to the date of his or her retirement.

(b)(1) Upon retirement on the normal retirement date, a member shall receive a monthly retirement benefit, payment of which shall commence on the effective date of retirement and which shall be payable on the first day of each month thereafter during the member’s lifetime. The amount of each monthly retirement payment shall be \$15.00 multiplied by the number of the member’s years of creditable service. The retirement benefit provided under this subsection shall be payable to those members who have already retired under this chapter as well as those members who retire in the future. If the General Assembly at any time appropriates funds expressly intended to fund the benefits provided in this subsection and such amount so appropriated is not sufficient to fund the maximum amount allowable, then the retirement benefit otherwise payable under this subsection shall be reduced pro rata by the board in accordance with the funds actually appropriated by the General Assembly for such purpose, but in no event shall the retirement benefit be less than \$12.00 multiplied by the member’s years of creditable service.

(2) Subject to the terms and limitations of this subsection, the board of trustees is authorized to adopt from time to time a method or methods of providing for increases in the retirement allowance paid up to the maximum benefit provided in paragraph (1) of this subsection. Such method shall be based upon:

- (A) The recommendation of the actuary of the board of trustees;

(B) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(C) Such other factors as the board deems relevant.

(c) Upon retirement on his delayed retirement date, a member shall receive a monthly retirement benefit, payment of which shall commence on his delayed effective date of retirement and which shall be payable on the first day of each month thereafter during his lifetime. The amount of each monthly retirement benefit shall be computed in the same manner as for a normal retirement benefit and shall be based on the number of years of creditable service as of the member's delayed retirement date.

(d) Any member who exercises his right to retire at an early retirement date pursuant to subsections (c) through (e) of Code Section 47-4-100 shall receive a monthly retirement benefit which shall begin on the early effective date of retirement. Such benefit shall be payable on the first day of each month thereafter during his lifetime. The amount of each monthly retirement benefit shall be computed in the same manner as for a normal retirement benefit and shall be based on the number of years of creditable service as of the member's early retirement date, provided that such benefit shall be actuarially reduced at the rate of one-half of 1 percent for each full month that such member is under 65 years of age. (Ga. L. 1969, p. 998, § 7; Ga. L. 1971, p. 917, § 2; Ga. L. 1973, p. 1197, §§ 4-6; Ga. L. 1977, p. 597, § 1; Ga. L. 1980, p. 1787, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 1859, § 5; Ga. L. 1988, p. 880, § 1; Ga. L. 1992, p. 1154, § 1; Ga. L. 1998, p. 151, § 1; Ga. L. 2002, p. 1131, § 1; Ga. L. 2003, p. 409, § 1; Ga. L. 2006, p. 1010, § 2/HB 1020.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1228 et seq. 1240 et seq.	C.J.S. — 67 C.J.S., Officers and Public Employees, § 318. 78 C.J.S., Schools and School Districts, § 264 et seq.
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47-4-102. Optional retirement benefits.

(a) At any time prior to his retirement a member may elect or may revoke a previous election and make a new election to have his retirement benefit payable under one of the options set forth in subsections (c) and (d) of this Code section in lieu of the lifetime income he is otherwise entitled to receive. The benefit shall be paid in accordance with the terms of such option elected. Election of any option shall be made by the member in writing and shall be subject to approval by the board.

(b) The amount of any optional retirement benefit set forth in this Code section shall be the actuarial equivalent of the amount of benefit that would otherwise be payable to the member under Code Section 47-4-101.

(c) Option A, the joint and survivor option, shall consist of a decreased retirement benefit which shall be payable to the member for life and shall continue after his death to the surviving joint annuitant in the same amount or in such smaller amount as he may designate. The election of this option shall be null and void if either the member or his joint annuitant dies before his normal retirement date.

(d) Option B, the period certain and life option, shall consist of a decreased retirement benefit commencing on the date of retirement and payable on the first day of each month during the lifetime of the member, provided that if the member dies prior to having received the elected number of guaranteed monthly retirement payments, such remaining guaranteed payments shall continue to his designated beneficiary.

(e) Any other provisions of this Code section or of this chapter to the contrary notwithstanding, the board of trustees may, by rule or regulation, require that when a member or a retired member dies and the beneficiary is a person other than the surviving spouse of the member, the benefits payable to the beneficiary shall be paid to the beneficiary within a definite time period immediately following the death of the member or retired member.

(f)(1) As used in this subsection, the term “retired member” means a person retired under this chapter who was unmarried at the time of his or her retirement.

(2) In the event a retired member marries subsequent to his or her retirement, the retired member may elect to begin receiving an actuarially reduced benefit of equivalent value and establish on behalf of the spouse Option A or B. Such election must be made by December 31, 1998, or within six months after the date of marriage, whichever date is later.

(3) This subsection applies to retired members who retired at any time prior to July 1, 1998, as well as to those who retire on or after that date. (Ga. L. 1969, p. 998, § 8; Ga. L. 1973, p. 1197, § 8; Ga. L. 1984, p. 810, § 3; Ga. L. 1998, p. 542, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1228.	Employees, § 314 et seq. 78 C.J.S., Schools and School Districts, § 264 et seq.
C.J.S. — 67 C.J.S., Officers and Public	

47-4-103. Disability retirement benefits; determination of disability.

Any member who obtains a minimum of 15 years of creditable service and who becomes totally and permanently disabled to the extent that he is unable to perform the duties of his employment shall be entitled to receive a disability retirement benefit equal to the full retirement benefit under

subsection (b) of Code Section 47-4-101 which benefit shall be based on the number of years of service at the time he became disabled. The disability of any member applying for disability retirement benefits shall be determined by the board in the same manner and under the same procedure as disability of state employees is determined under the Employees' Retirement System of Georgia. Disability retirement benefits shall become payable within 30 days after such disability is determined by the board. (Ga. L. 1973, p. 1197, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1207 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 319 et seq. 78 C.J.S., Schools and School Districts, § 264 et seq.

47-4-104. Benefits payable upon the death of a member; refunds to members whose employment has been terminated.

- (a) If a member dies prior to his normal retirement date, his beneficiary shall receive a lump sum refund of his accumulated contributions made under the retirement system to the member's date of death, unless the member retired before his normal retirement date, in which event the refund of contributions shall be reduced by the amount of retirement benefits paid prior to the member's death.
- (b) If a member who has not elected an optional form of payment under Code Section 47-4-102, dies on or after his normal retirement date but prior to receiving benefits totaling his accumulated contributions to his retirement date, a death benefit shall be payable in a lump sum to the beneficiary of the member. The amount of such death benefit shall be the difference between total benefits actually paid to the member and his accumulated contributions.
- (c) If a member who has elected an optional form of payment under Code Section 47-4-102 dies on or after his normal retirement date but prior to his actual retirement, a death benefit will be payable as provided for by the option elected, determined as if the member had retired on the day preceding the date of his death.
- (d) If a member who has elected an optional form of payment under Code Section 47-4-102 dies subsequent to actual retirement, a death benefit shall be payable as provided for by the option elected.
- (e) If the employment of a member is terminated either voluntarily or involuntarily at any time prior to his normal retirement date, he shall be entitled to a refund of his accumulated contributions to the date of his termination. Any such terminated member who withdraws his accumulated contributions and who is subsequently reemployed as a public school employee shall be entitled to reestablish the service credited to him at the

time of his termination after he has been continuously reemployed for a minimum of two years. In order to reestablish such service, the reemployed member must pay to the board the amount withdrawn from the fund at the time of his previous termination, plus regular interest on such amount from the date of such withdrawal to the date such payment is made to the board.

(f) If a member at least 60 years of age and having at least ten years of creditable service dies before retirement, the member's designated beneficiary shall receive for life the lesser retirement benefit which would be payable under Option A. As used in this subsection, the term "beneficiary" shall not include the estate of the member, notwithstanding the provisions of paragraph (3) of Code Section 47-4-2. (Ga. L. 1969, p. 998, § 9; Ga. L. 1973, p. 1197, § 9; Ga. L. 1979, p. 884, § 2; Ga. L. 1981, p. 527, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 2000, p. 131, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Application when contributions withdrawn and reestablishment of service sought. — Ga. L. 1979, p. 884, §§ 1 and 2 (see O.C.G.A. §§ 47-4-40 and 47-4-104) apply only to former retirement system members who

withdraw contributions from the system and later seek to reestablish those withdrawn contributions and the service those contributions represent. 1979 Op. Att'y Gen. No. 79-57.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1187 et seq., 1207 et seq., 1224 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 78 C.J.S., Schools and School Districts, § 264 et seq.

47-4-105. Postretirement benefit adjustments.

The board is authorized to grant postretirement benefit adjustments from time to time for the purpose of maintaining essentially no less purchasing power for persons receiving benefits pursuant to the provisions of this chapter. Granting postretirement benefit adjustments shall be based on the following factors:

- (1) The recommendations of the actuary for the retirement system;
- (2) Maintaining the actuarial soundness of the retirement system;
- (3) Appropriations by the General Assembly if appropriations are made for the purpose of granting such postretirement benefit adjustments; and
- (4) Such other factors as the board finds relevant. (Code 1981, § 47-4-105, enacted by Ga. L. 1988, p. 879, § 1.)

47-4-106. Return to public service of retired member.

(a) If any retired member who has not yet reached normal retirement age returns to service as a public school employee in any position which

normally requires membership in this retirement system, such member's retirement benefit shall cease and the retired member shall reestablish active membership in this retirement system. The member shall have the same creditable service which the member possessed at the time of retirement and shall accumulate additional creditable service so long as such active membership continues. Upon cessation of such service, or upon attainment of normal retirement age and cessation of contributions, the retired member, after proper notification to the board, shall receive a retirement benefit based on the member's total accrued service reduced by any amount already received prior to reemployment.

(b) If any retired member who has reached normal retirement age returns to service as a public school employee in any position that would normally require membership in this retirement system, such member shall have the option to:

(1) Contribute to the system, in which event the member's retirement benefit shall cease and the retired member shall reestablish active membership in this retirement system. The member shall have the same creditable service which the member possessed at the time of retirement and shall accumulate additional creditable service so long as such active membership continues. Upon cessation of such service, the retired member, after proper notification to the board, shall receive a retirement benefit based on the member's total accrued service reduced by any amounts already received; or

(2) Not contribute to the system, in which event the member's retirement benefit shall not cease, and no additional benefits will accrue.

(c) Any employer which employs a retired member shall within 30 days of the employee's accepting employment notify the board of trustees in writing stating the name of the member and, if the retired member is age 65 or older, shall provide in writing from the retired member his or her election either to discontinue benefits and resume contributions, or to continue receiving retirement benefits and accrue no additional credits under the retirement system. Any employer which fails to notify the board of trustees as required by this subsection shall reimburse the retirement system for any benefits wrongfully paid. It shall be the duty of the retired member seeking employment by the employer to notify the employer of his or her retirement status prior to accepting such position. If a retired member fails to so notify the employer and the employer becomes liable to the retirement system, the member shall hold the employer harmless for all such liability. (Code 1981, § 47-4-106, enacted by Ga. L. 2009, p. 947, § 23/HB 202; Ga. L. 2010, p. 427, § 11/HB 969.)

Effective date. — This Code section became effective May 11, 2009.
The 2010 amendment, effective May 24, 2010, designated the existing provisions as

subsection (a); in the last sentence of subsection (a), inserted "or upon attainment of normal retirement age and cessation of contributions," near the beginning and added

“reduced by any amount already received prior to reemployment” at the end; and added subsections (b) and (c).

ARTICLE 7

MISCELLANEOUS PROVISIONS

47-4-120. Exemption of rights and benefits from state and local taxes and from legal process; restriction on assignability.

The right to a retirement benefit, return of contributions, any optional benefit, or any other right accrued or accruing to any person under this chapter shall be exempt from any state, county, or municipal tax, except as provided in Code Section 48-7-27; exempt from levy and sale, garnishment, attachment, or any other process whatsoever; and unassignable, except as otherwise specifically provided for in this chapter. (Ga. L. 1969, p. 998, § 20; Ga. L. 2000, p. 1449, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions, §§ 248 et seq., 288 et seq.

C.J.S. — 33 C.J.S., Executions, § 42. 38 C.J.S., Garnishment, §§ 27 et seq., 92 et seq., 137.

ALR. — Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711.

47-4-121. Attempts to defraud the retirement system by means of false statements or falsified records; adjustment of erroneous payments.

(a) Any person who knowingly makes any false statements or falsifies or permits to be falsified any records of the retirement system in any attempt to defraud the retirement system, as a result of such act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding \$500.00 or imprisonment not exceeding 12 months or both.

(b) If any change or error in the records results in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board shall have the power to correct such error and to adjust the payments as far as practicable and in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (Ga. L. 1969, p. 998, §§ 21, 22.)

OPINIONS OF THE ATTORNEY GENERAL

Trustees correct failure to detail amount of service credit. — Board of trustees has the statutory authority to correct its records; this authority obtains even when the incor-

rectness of the records is in no manner attributable to the retirement system, but is wholly caused by a member and the member's employer failing to detail an accurate amount of prior service credit. 1976 Op. Att'y Gen. No. 76-25.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 309. 70 C.J.S., Pensions, § 12. 78 C.J.S., Schools and School Districts, § 264 et seq.

CHAPTER 5

GEORGIA MUNICIPAL EMPLOYEES BENEFIT SYSTEM

Article 1

General Provisions

- Sec.
47-5-1. Legislative intent; construction of this chapter.
47-5-2. Definitions.

Article 2

Administration and Management of the Assets of the Benefit System

- 47-5-20. Creation of board of trustees.
47-5-21. Membership of board.
47-5-22. Officers of the board of trustees; election; merger of offices of secretary and treasurer; compensation of the secretary and treasurer; treasurer's performance bond.
47-5-23. Powers of the board of trustees generally.
47-5-24. Powers of board with regard to funds held by it.
47-5-25. Valuation of assets of the retirement system.
47-5-26. Duty of board of trustees to file an annual financial report with each member employer; filing of objections to transactions shown in such report.
47-5-27. Payment of administrative expenses of the board of trustees; allocation of expenses among member municipalities.
47-5-28. Accounts for participating employees, member employers, and as otherwise required; authorization of funds; commingling restriction.
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tion of principal value of each unit of funds.
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Article 3

Retirement Plans

- 47-5-40. Power of employers to establish retirement plans; benefits under such plans; power to implement such plans by contract; financing of such plans.
47-5-41. Establishment and use of master plans.
47-5-42. Provisions of contracts and plans.
47-5-43. Provisions for early and normal retirement ages.
47-5-44. Credit for prior service.
47-5-45. Uninterrupted participation during transfer from one member municipality to another.
47-5-46. Transfer of credits.
47-5-47. Return of contributions to employee or employee's estate.

Article 4

Miscellaneous Provisions

- 47-5-70. Creation of debts of the state under this chapter.
47-5-71. Exemption from levy, attachment, or other process of funds held by the board of trustees or for its account; assignment of benefits or contracts established under this chapter.
47-5-72. Exemption of chapter from regulation under Title 33.

OPINIONS OF THE ATTORNEY GENERAL

Retirement benefits are not gifts, but are compensation. 1973 Op. Att’y Gen. No. U73-119.

Municipal corporation with retirement plan must publish notice. — Municipal cor-

poration which adopts or amends retirement plan for employees must publish notice of intent. 1973 Op. Att’y Gen. No. U73-119.

RESEARCH REFERENCES

ALR. — Reasonableness of classification, as regards beneficiaries, by statute providing for retirement fund or pension for public officers or employees, 163 ALR 870.

Gift to or for employees’ pension fund as valid charitable gift or trust, 28 ALR2d 428.

Unemployment compensation: eligibility of employee laid off according to employer’s mandatory retirement plan, 50 ALR3d 880.

ARTICLE 1

GENERAL PROVISIONS

47-5-1. Legislative intent; construction of this chapter.

(a) It is declared to be the intent of the General Assembly to provide a method whereby the municipal corporations and certain other entities of this state may, in the discretion of their respective governing bodies, provide retirement and other benefits to their employees through a common administrative and investment system. Such a system based on joint participation will permit municipal corporations and other entities, regardless of size, to provide certain benefits to their employees, will reduce overall administrative costs which might be prohibitive if undertaken individually, will make possible better investment opportunities, and through a provision for continuity of service will provide added security for professional employees who transfer from one municipal corporation or other entity to another in the state. Creation of such a retirement system is considered to be in the public interest in order to attract and retain better qualified personnel in local governmental service and to provide greater personal security to local governmental employees in their old age.

(b) It is intended that this chapter be liberally construed to effectuate this intent. (Ga. L. 1965, p. 421, § 1; Ga. L. 1992, p. 989, § 1.)

JUDICIAL DECISIONS

No notice required prior to council’s considering joining system. — City council is not required by statute to advertise notice of the council’s intent to consider an ordinance extending participation in the Joint Municipal Employees Retirement System (now

Joint Municipal Employees Benefit System) pension to the council’s own members. *City of Marietta v. Holland*, 252 Ga. 299, 314 S.E.2d 97 (1984).

Cited in *Bituminous Cas. Corp. v. R.D.C., Inc.*, 334 F. Supp. 1163 (N.D. Ga. 1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1167 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 649 et seq.

47-5-2. Definitions.

As used in this chapter, the term:

(1) “Benefit system” or “system” means the Georgia Municipal Employees Benefit System created by this chapter.

(2) “Board of trustees” or “board” means the Board of Trustees of the Georgia Municipal Employees Benefit System.

(3) “Contract” means a contract executed pursuant to this chapter between the board of trustees and a member employer.

(4) “Defined benefit” means a plan whereby retirement benefits are determined in advance by a formula and the contributions are treated as the variable factor.

(5) “Defined contribution” means a plan whereby the contributions to the plan are fixed in advance and the retirement benefit is the variable factor.

(6) “Employee” means any full-time salaried or hourly rated person in the active service of an employer and any employees of the board of trustees. Notwithstanding any laws to the contrary, the term also includes any appointed or elected member of the governing authority of a municipal corporation of this state, the chief legal officer or any associate legal officer of a municipal corporation, and any municipal officer elected or appointed to preside over the court of a municipal corporation. Said term shall also include part-time employees of an employer for the purposes of participating in employee benefit plans.

(7) “Employee benefits” means group health benefits, group short-term disability benefits, group death benefits, group accidental death and dismemberment benefits, and such other benefits as from time to time the board may deem advisable.

(8) “Employee benefit fund” means any other pooled fund, other than the retirement fund and workers’ compensation fund, created by the board for the purpose of providing employee benefits on behalf of member employers.

(9) “Employer” means:

(A) A municipal corporation of this state;

(B) The Emergency Management Division of the State Department of Defense;

(C) Local emergency management organizations;

(D) Regional commissions created pursuant to Article 2 of Chapter 8 of Title 50 and planning and development commissions, including, but not limited to, a planning commission, planning and development commission, or area planning and development commission which is created by one or more municipalities or counties or combinations thereof to serve cities or counties or any combination thereof and which employs a staff and is governed by a separate board or other governing body and whose operations are financed through an independent budget;

(E) Authorities, including, but not limited to, a public authority, commission, board, or similar agency which is created by general, local, or special Act of the General Assembly and which carries out its functions wholly or partly within the corporate boundaries of a municipal corporation of this state. The term also includes such bodies which are created or activated by an appropriate ordinance or resolution of the governing body of a municipal corporation individually or jointly with other political subdivisions of this state;

(F) The Georgia Municipal Association;

(G) The Jointly Owned Natural Gas Transmission Line which was established by contract by the Cities of Perry, Warner Robins, Hawkinsville, and Cochran;

(H) Consolidated city-county governments of this state;

(I) The Municipal Gas Authority of Georgia, and any successor thereto, created pursuant to Article 4 of Chapter 4 of Title 46; or

(J) A state or federally chartered credit union whose membership is comprised of municipal, county, or hospital authority employees.

(10) "Local emergency management organization" means all local organizations for emergency management established pursuant to Chapter 3 of Title 38, the "Georgia Emergency Management Act of 1981," by a municipal corporation, a county, a combination of one or more municipal corporations or counties, the Governor, or the director of emergency management at the request of the Governor.

(11) "Member employer" means an employer which has contracted to become a member of the benefit system as provided for in this chapter or an employer which is a member of a group self-insured workers' compensation fund for which the board serves as trustees.

(12) "Participating employee" means an employee of a member employer for whom contributions to the retirement fund are being made under a contract.

(13) “Retirement benefits” means defined benefits, defined contribution benefits, and death or disability retirement benefits provided by a member employer to an employee as part of the employee’s compensation. The term shall also include optional settlement benefits which are determined by the board of trustees to be actuarially equivalent to the primary retirement benefits provided in a contract; deferred compensation; qualified voluntary employee contributions; and other salary deferral plans authorized by the Internal Revenue Code of the United States.

(14) “Retirement fund” means the pooled investment fund for retirement purposes created by this chapter, in which the contributions of participating employees and of member employers are commingled for investment purposes.

(15) “Workers’ compensation benefits” means benefits payable out of the workers’ compensation fund pursuant to Chapter 9 of Title 34.

(16) “Workers’ compensation fund” means a group self-insurance fund comprised of employers as defined in paragraph (9) of this Code section.

(17) “Vesting,” “vested right,” or “vested benefit” means any right of an employee to the retirement benefits attributable to a municipality’s contributions under a contract in the event of termination of employment prior to retirement. (Ga. L. 1965, p. 421, § 2; Ga. L. 1966, p. 539, § 1; Ga. L. 1968, p. 1387, § 1; Ga. L. 1972, p. 637, § 1; Ga. L. 1972, p. 747, § 1; Ga. L. 1973, p. 446, § 1; Ga. L. 1974, p. 699, § 1; Ga. L. 1975, p. 1005, § 1; Ga. L. 1984, p. 1041, § 1; Ga. L. 1988, p. 401, § 1; Ga. L. 1989, p. 52, § 1; Ga. L. 1989, p. 611, § 1; Ga. L. 1990, p. 190, § 3; Ga. L. 1992, p. 989, § 2; Ga. L. 2000, p. 131, § 1; Ga. L. 2009, p. 368, § 1/SB 48.)

The 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct this title, substituted “Regional

commissions created” for “Regional development centers created” in subparagraph (9)(D).

JUDICIAL DECISIONS

Cited in Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 2 et seq., 597 et seq. 67 C.J.S., Officers and Public Employees, § 311 et seq.

ALR. — What constitutes “salary,” “wages,” “pay,” or the like, within pension law basing benefits thereon, 91 ALR5th 225.

ARTICLE 2

**ADMINISTRATION AND MANAGEMENT OF THE ASSETS OF THE
BENEFIT SYSTEM**

47-5-20. Creation of board of trustees.

There is created a public corporation of this state to be known as “The Board of Trustees of the Georgia Municipal Employees Benefit System (GMEBS).” Said corporation shall be the successor to the Joint Municipal Employees Retirement System (JMERS) and it is the intent of this chapter that all rights, duties, and obligations of JMERS are assigned to and are assumed by the new system. The creation of GMEBS shall not increase, diminish, grant, destroy, impair, alter, or otherwise affect any pension, retirement benefit or allowance, survivors benefit, membership or right to membership, creditable service or right thereto, prior service or right thereto, or any option, election, or right of any kind created pursuant to a contract or ordinance or resolution with the Joint Municipal Employees Retirement System in existence on July 1, 1984. The GMEBS board shall have and be vested with, as a minimum, the same rights, powers, duties, privileges, and authority of any board of a municipal employee benefit program to which the GMEBS board serves as a successor board. (Ga. L. 1965, p. 421, § 3; Ga. L. 1984, p. 1041, § 2; Ga. L. 1990, p. 190, § 4.)

JUDICIAL DECISIONS

Cited in Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313.

47-5-21. Membership of board.

(a) The board of trustees shall consist of 15 members. To be eligible for membership on the board of trustees, a person must be a citizen of this state. Members of the board of trustees shall be eligible to succeed themselves but shall not serve more than three consecutive full terms.

(b) Except for the term of the initial board, trustees shall be employees or elected or appointed officers of a member employer. Ten trustees shall be elected officers of a municipal corporation. Five trustees shall be employees or appointed officers of a municipal corporation. The initial trustees whose terms shall begin upon appointment and end as follows shall be:

(1) Mayor Hobby Stripling of Vienna, Georgia, for a term ending June 30, 1985;

(2) Mayor Ernest Whaley of Clarkston, Georgia, for a term ending June 30, 1985;

(3) Mayor Tracy Stallings of Carrollton, Georgia, for a term ending June 30, 1985;

(4) Mayor Willis Wombles of Wrightsville, Georgia, for a term ending June 30, 1985;

(5) City Administrator Robert Schwartz, Garden City, Georgia, for a term ending June 30, 1985;

(6) Councilman Clyde Kinnett of East Point, Georgia, for a term ending June 30, 1986;

(7) Mayor Cecil Evans of Tifton, Georgia, for a term ending June 30, 1986;

(8) Mayor J. I. Youngblood of Ashburn, Georgia, for a term ending June 30, 1986;

(9) City Manager Wilbur Avera of Thomaston, Georgia, for a term ending June 30, 1986;

(10) City Manager James Calvin of Toccoa, Georgia, for a term ending June 30, 1986;

(11) Mayor J. C. Woods of Trion, Georgia, for a term ending June 30, 1987;

(12) Mayor Robert Knox, Jr., of Thomson, Georgia, for a term ending June 30, 1987;

(13) Mayor Lillian Webb of Norcross, Georgia, for a term ending June 30, 1987;

(14) City Clerk Thomas McMinn of Warner Robins, Georgia, for a term ending June 30, 1987; and

(15) City Manager Alex Howell of Fairburn, Georgia, for a term ending June 30, 1987.

(c) As the initial terms for which appointments have been made expire, future such members shall be chosen in accordance with the bylaws of the board of trustees. Upon the expiration of the initial terms of the trustees as provided in subsection (b) of this Code section, should any of the trustees cease to be an employee or an elected or appointed officer of a municipal corporation, the trustee shall no longer be eligible to serve on the board of trustees, and the position shall be deemed to be vacant. Vacancies shall be

filled as provided in the bylaws of the board of trustees. (Ga. L. 1965, p. 421, §§ 4-6; Ga. L. 1966, p. 539, § 2; Ga. L. 1984, p. 1041, § 3.)

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 446.

47-5-22. Officers of the board of trustees; election; merger of offices of secretary and treasurer; compensation of the secretary and treasurer; treasurer's performance bond.

At its first meeting following July 1 in each year, the board of trustees shall elect a chairman, secretary, treasurer, and such other officers as provided in the bylaws of the board. The secretary and the treasurer need not be members of the board; and such offices may, in the discretion of the board of trustees, be combined in one person. The secretary and the treasurer, whether or not members of the board of trustees, may receive such compensation as may be fixed by the board of trustees for the performance of their duties. The treasurer shall give good and sufficient bond in such amount as is required by the board of trustees, and the premium on such bond shall be paid from the administrative funds of the board. (Ga. L. 1965, p. 421, § 7; Ga. L. 1984, p. 1041, § 4.)

47-5-23. Powers of the board of trustees generally.

The board of trustees shall have the following specific powers, together with such other powers as may be necessary or incidental to such powers in effectuating the purposes of this chapter:

- (1) To adopt bylaws governing its operations and procedures;
- (2) To contract with municipal corporations and other public bodies of this state and private entities for the use or furnishing of services and facilities necessary, useful, or incident to providing retirement benefits, workers' compensation benefits, and employee benefits under this chapter;
- (3) To determine the actuarial soundness of proposed contracts for the provision of retirement benefits and employee benefits under this chapter and to execute or reject such contracts;
- (4) To provide for termination of trusteeship and transfer of assets to successor trustees upon terms specified in the contract for provision of retirement benefits and employee benefits;
- (5) To contract with member employers to provide employee benefits through the use of insurance companies, self-funding, or other funding method as determined by the board;

- (6) To employ legal counsel;
- (7) To employ and contract with actuaries, auditors, accountants, investment advisers, investment brokers, consultants, medical personnel, and other agents and employees;
- (8) To collect and disburse all funds due or payable under this chapter;
- (9) To adopt mortality tables and other actuarial assumptions to be used for funding purposes and administrative purposes;
- (10) To provide for and promulgate all the rules, regulations, and forms that are deemed as necessary or desirable in contracting with member employers, in fulfilling its purposes of providing retirement benefits, workers' compensation benefits, and employee benefits, and in maintaining proper records and accountings;
- (11) To bring and defend actions, sue and be sued, and plead and be impleaded;
- (12) To expend funds for the purchase of fidelity and surety bonds and liability insurance for the protection and indemnification of trustees in the performance of their duties;
- (13) To expend funds for the reasonable expenses of trustees while engaged in the performance of their duties;
- (14) To purchase insurance contracts on the lives of participating employees and pay all premiums thereon;
- (15) To employ insurance companies to provide actuarial advice;
- (16) To employ insurance companies, banks, trust companies, and investment brokers as agents for the keeping of records and the receipt and disbursement of funds held by or due the trustees;
- (17) To serve as trustees of a municipal workers' compensation group self-insurance fund which is established by employers as defined in paragraph (9) of Code Section 47-5-2 and which is operated pursuant to Article 5 of Chapter 9 of Title 34 and rules and regulations of the Georgia Insurance Department, notwithstanding the definition contained in paragraph (11) of Code Section 34-9-151;
- (18) To accept gifts and donations of property of every nature and use such property for the purposes of this chapter; and
- (19) To adopt and alter a seal. (Ga. L. 1965, p. 421, §§ 3, 8; Ga. L. 1984, p. 1041, § 5.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313.

47-5-24. Powers of board with regard to funds held by it.

(a) The board of trustees is authorized to invest and reinvest funds held by it in any investments which are legal investments under Article 7 of Chapter 20 of this title, the “Public Retirement Systems Investment Authority Law”. The board of trustees shall have the discretion to decide the allocation of funds among such investments. The board of trustees is further authorized to purchase, acquire, hold, lease, sell, and convey real and personal property.

(b) The board of trustees is authorized to place funds held by it with banks or trust companies which have corporate trust powers and to authorize any such bank or trust company to invest and reinvest such funds for its account, subject to the investment restrictions of subsection (a) of this Code section. The board of trustees shall prescribe the powers and duties of such banks and trust companies in accordance with this chapter. Funds of the board of trustees on deposit with any one such bank or trust company shall not execute 25 percent of the combined capital and surplus of such bank or trust company. Such bank or trust company shall give bond or pledge sufficient federal or municipal securities to secure the deposits of the board of trustees.

(c) The board of trustees is authorized to place funds held by it with insurance companies authorized to do business in this state for the purpose of investment at guaranteed or anticipated rates of interest.

(d) Notwithstanding the investment restrictions of subsection (a) of this Code section, the board of trustees is authorized, for a consideration, to pledge funds held by it to third parties, including lenders, for the purpose of guaranteeing the contract obligations of municipal corporations and other public bodies of this state, providing surety obligations in connection with such contracts, and obligating it to assume any such contracts in the event that the municipal corporation or other public body fails to renew such contract for its full stated term. Such guaranties, sureties, or assumptions shall constitute activities and services that the board of trustees and the contracting municipal corporations or other public bodies are authorized to undertake and provide, and shall be undertaken pursuant to Article IX, Section III, Paragraph I of the Constitution, provided that the full faith and credit of the municipal corporation or other public body receiving the benefit of such guaranty, surety, or assumption is pledged to repay any amounts required to be paid by the board of trustees as a result of such guaranty, surety, or assumption. (Ga. L. 1965, p. 421, §§ 15-17, 24; Ga. L. 1984, p. 1041, § 6; Ga. L. 1990, p. 190, § 5; Ga. L. 1991, p. 130, § 1; Ga. L. 2000, p. 2, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq. **C.J.S.** — 67 C.J.S., Officers and Public Employees, § 313.

47-5-25. Valuation of assets of the retirement system.

The board of trustees shall prescribe in its bylaws the method of valuation of assets, which method shall be in accordance with acceptable accounting practices in use by corporate trustees. (Ga. L. 1965, p. 421, § 18.)

47-5-26. Duty of board of trustees to file an annual financial report with each member employer; filing of objections to transactions shown in such report.

The board of trustees shall file with each member employer an annual written report showing pertinent transactions affecting its respective retirement fund account, workers' compensation fund account, or employee benefit fund account since the last previous such report. Within 90 days of the receipt of such report, a member employer may file written objections with the board of trustees with respect to any transactions regarding its account as shown in such report. (Ga. L. 1965, p. 421, § 22; Ga. L. 1984, p. 1041, § 7.)

47-5-27. Payment of administrative expenses of the board of trustees; allocation of expenses among member municipalities.

The administrative expenses of the board of trustees, including all operational expenses, fees, compensation, and other costs, shall be paid from funds held by it and may be chargeable by it to either principal or income or both, as determined by it, as of any valuation date. Further, the board of trustees shall have the authority to allocate expenses among member municipalities on the basis of costs. Administrative expenses for the first year of operation may be assessed against first year contributions in proportion to the number of participating employees. (Ga. L. 1965, p. 421, § 23; Ga. L. 1966, p. 539, § 7.)

47-5-28. Accounts for participating employees, member employers, and as otherwise required; authorization of funds; commingling restriction.

(a) The board of trustees shall administer the retirement fund and shall maintain records as follows:

(1) The board of trustees shall maintain individual accounts for each participating employee, to which shall be credited the dollar value of participation allocated to such employee under the respective member

employer's retirement plan, and such other accounts, if any, as may be reasonably required, in the discretion of the board of trustees, for the convenient administration of the plan;

(2) There shall be credited to the contribution account of each member employer all contributions received by the board of trustees from it or its participating employees and there shall be charged against such account all payments made from it pursuant to the terms of the retirement plan, together with any other payment or expenses chargeable against that account;

(3) The interest of each member employer in any retirement fund established under the system shall be represented by units which shall constitute equal interest in any such fund; and

(4) The board of trustees may from time to time establish new or additional retirement funds and may separate and place new contributions in such funds instead of adding to existing funds, provided that member employers continue to be represented by units which constitute equal interests in such funds.

(b) The board of trustees may establish a workers' compensation fund, employee benefit fund, and other funds necessary or incident to the provision of workers' compensation benefits and employee benefits under this chapter.

(c) The retirement fund shall not be commingled with the workers' compensation fund, employee benefit fund, or other funds. (Ga. L. 1965, p. 421, § 18; Ga. L. 1966, p. 539, § 6; Ga. L. 1984, p. 1041, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313.

47-5-29. Periodic determination of principal and income of the funds; periodic merger of principal and income; method for determination of principal value of each unit of funds.

(a) The board of trustees shall determine the principal and income of the retirement fund, workers' compensation fund, employee benefit fund, and other funds on periodic evaluation dates established by the board of trustees, but at least once every 12 months. Income shall be determined by the board of trustees in accordance with an established method which it may prescribe in its bylaws and which conforms to acceptable accounting practices in use by corporate trustees. Income shall be added to and become part of the principal of the various funds on the periodic valuation dates established under this Code section. The board of trustees shall deduct from either principal or income, or both, such charges, expenses,

and liabilities as it determines in its discretion to be chargeable against either.

(b) The principal value of each unit into which the funds are divided shall be determined on each such periodic valuation date by dividing the then principal value of the funds by the number of units into which it is then divided. (Ga. L. 1965, p. 421, §§ 19, 20; Ga. L. 1984, p. 1041, § 9.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

47-5-30. Periodic audit of the accounts of the board of trustees; contents and availability of report of such audit; standard of care in conduct of the audit and liability of auditors.

(a) At least once every 12 months an audit shall be made of the retirement fund, workers' compensation fund, employee benefit fund, and other funds by independent certified public accountants responsible only to and appointed by the board of trustees. The compensation and reasonable expenses of any independent public accountants may be charged to the funds and apportioned between the principal and income as the board of trustees may deem proper.

(b) The auditors appointed shall audit the accounts of the board of trustees and shall make a report of such audit, which report shall include a list of the investments and other assets comprising the various funds on the last day of the period covered by such audit and shall show the valuation placed on each such investment and asset as of that date. The report shall also include a statement of charges, sales, and any other investment charges, and of all income and disbursements since the last audit, and appropriate comments as to any investment in default as to principal or interest. Promptly upon receipt by the board of trustees of such report, the board of trustees shall send notice to each employer to which a regular periodic accounting would ordinarily be rendered that the report is available and that a copy will be furnished upon request. Such audits shall be included with the annual written report filed with each member employer pursuant to Code Section 47-5-26.

(c) In auditing the accounts of the board of trustees, the auditors shall be required to make only such examination of the accounts and records as they deem reasonably necessary. The auditors shall incur no liability for any act done or suffered by them in good faith in the exercise of reasonable care.

(d) The auditors shall include in their report their unqualified opinion on the presentation of the financial position and operations of the fund. If such auditors are unable to express an unqualified opinion, they shall so

state and shall further detail reasons for their qualification or disclaimer, including recommendations for improvements. (Ga. L. 1965, p. 421, § 21; Ga. L. 1982, p. 3, § 47; Ga. L. 1984, p. 1041, § 10; Ga. L. 1992, p. 477, § 1.)

ARTICLE 3

RETIREMENT PLANS

Editor's notes. — Ga. L. 1984, p. 1041, § 11, effective July 1, 1984, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of §§ 44-5-40 through 44-5-52 and was based on Ga. L. 1965, p. 421, §§ 9-11, 13, 14, 21, 27; Ga. L. 1966, p. 539, §§ 3-5; Ga. L. 1968, p. 1387, §§ 2-6; Ga. L. 1970, p. 201, § 1; Ga. L. 1971, p. 210, § 1; Ga. L. 1972, p. 747, § 2; Ga. L. 1973, p. 446, § 2; Ga. L. 1974, p. 699, § 2; Ga. L. 1982, p. 3, § 47.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1167 et seq.
C.J.S. — 62 C.J.S., Municipal Corporations, § 649 et seq. 67 C.J.S., Officers and Public Employees, § 311 et seq.

47-5-40. Power of employers to establish retirement plans; benefits under such plans; power to implement such plans by contract; financing of such plans.

(a)(1) Each employer is empowered to establish a plan or plans for the provision of retirement or employee benefits for its employees. Such plans shall be enacted by ordinance of the governing body of a municipal corporation or by a resolution of the governing body of other employers. The ordinance or resolution shall set forth the employees to be covered, the benefits to be provided, and the conditions of the plan. Benefits under the plan may include retirement and employee benefits. A plan for employee benefits may provide for the method of funding such benefits through the use of insurance, self-funding, or otherwise.

(2) Any contract between the board of trustees and a member employer which provides a defined benefit plan shall contain a provision that such defined benefits are to be provided, to the extent fixed in such plan, by the employer and that the board of trustees does not guarantee the defined amount.

(b) Each employer is further empowered to implement such plan or plans by contract with the board of trustees in accordance with the rules and regulations promulgated by the board of trustees. The contract with the board of trustees shall be executed pursuant to the ordinance or resolution which enacted the plan.

(c) Each employer is authorized to make reasonable classifications of employees in its plan and to provide for integration of its plan with social security benefits and with other retirement or pension plans under which certain classes of employees may be entitled to benefits.

(d) Each employer is authorized to appropriate funds to provide the benefits under such plan and to pay its respective portion of the administrative costs of the board of trustees in administering the system. In no event shall an employee's contribution exceed 50 percent of the value of such employee's benefit payable from the plan at the earlier of termination of employment or commencement of benefits. The valuation of benefits shall be made in accordance with the actuarial assumptions used to determine employer contributions in effect at the time of the determination.

(e) Contributions paid by a municipal corporation shall be paid from municipal funds which are on hand or which will be collected in the year the contribution is made and shall not be deemed to create a debt of the municipal corporation. (Code 1981, § 47-5-40, enacted by Ga. L. 1984, p. 1041, § 11; Ga. L. 1995, p. 1061, § 1.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

JUDICIAL DECISIONS

Classifications. — City pension plan classifying city employees and the employees' surviving spouses on the basis of retirement status was reasonable. *Strickland v. City of Albany*, 270 Ga. 31, 504 S.E.2d 666 (1998).

Cited in *Bituminous Cas. Corp. v. R.D.C., Inc.*, 334 F. Supp. 1163 (N.D. Ga. 1971).

47-5-41. Establishment and use of master plans.

(a)(1) The board of trustees has the power to establish one or more master plans which may be adopted by any employer that, upon the date that it agrees to join the plan, has fewer than 16 employees who elect and are qualified for plan participation. The employees to be covered, the retirement and employee benefits to be provided, and the terms and conditions for retirement benefits and other benefits shall be provided in the master plan. A municipal corporation is empowered to adopt such a plan by ordinance and to execute an agreement with the board of trustees to provide retirement and employee benefits as provided in the plan and to designate a board of trustees of the plan. Other employers shall have the power to adopt such plans by resolution of its governing body and to execute such agreements. The agreement, plan, and trust entered into by each member employer shall constitute a separate plan and trust and should be considered as such by the board of trustees. A master plan providing employee benefits may provide for the method of funding such benefits through the use of insurance, self-funding, or otherwise.

(2) Any agreement between the board of trustees and a member employer which provides a defined benefit plan shall contain a provision that such defined benefits are to be provided, to the extent fixed in the

master plan, by the member employer and that the board of trustees does not guarantee the fixed amount.

(b) The board of trustees is empowered to implement such plan by separate agreement with each employer which has adopted such plan by ordinance or resolution, in accordance with this chapter and with the rules and regulations promulgated by the board of trustees. Execution of an agreement between an employer and the board of trustees shall constitute a contract binding on both parties to provide benefits according to the plan and the terms set forth in the agreement.

(c) The board of trustees is authorized to specify in the master plan reasonable employee classifications and to provide, where appropriate, for integration of the benefits provided in the master plan with social security benefits and with other retirement or pension plans under which certain classes of employees may be entitled to benefits. The board of trustees shall incorporate into the master plan the provisions authorized in Code Sections 47-5-42, 47-5-43, and 47-5-44, relative to the selection of various plan features.

(d) Employers are authorized to appropriate funds to provide the benefits specified in such master plan and to pay their portion of the administrative costs of the board of trustees in administering the system. In no event shall an employee's contribution exceed 50 percent of the value of such employee's benefit payable from the plan at the earlier of termination of employment or commencement of benefits. The valuation of benefits shall be made in accordance with the actuarial assumptions used to determine employer contributions in effect at the time of the determination.

(e) Contributions paid by a municipal corporation shall be paid from municipal funds which are on hand or which will be collected in the year the contribution is made and shall not be deemed to create a debt of the municipal corporation. (Code 1981, § 47-5-41, enacted by Ga. L. 1984, p. 1041, § 11; Ga. L. 1995, p. 1061, § 2.)

47-5-42. Provisions of contracts and plans.

(a) Each member employer that has adopted a plan for the provision of retirement benefits or employee benefits under Code Section 47-5-40 is authorized in its plan and contract to include such provisions as are necessary for the development of a suitable plan, which provisions shall be subject to the approval of the board of trustees, including, but not limited to, the following:

- (1) Minimum age at entry into its plan;
- (2) Minimum years of service at entry into its plan;

- (3) Maximum years of service credit allowable;
- (4) Provisions relating to separation and return to employment;
- (5) Types of benefits to be provided;
- (6) Types of vesting provisions, if any, to be provided;
- (7) Types of disability retirement provisions, if any, to be provided;
- (8) Minimum years of required participation in the plan;
- (9) Provisions relating to benefits for part-time employment; and
- (10) Any other provisions necessary, incidental, or helpful in providing the intended benefits.

(b) The board of trustees is authorized to reject any contract provision which it determines to be actuarially unsound or which it determines would create an undue administrative burden. (Code 1981, § 47-5-42, enacted by Ga. L. 1984, p. 1041, § 11; Ga. L. 1985, p. 209, § 1; Ga. L. 1985, p. 1359, § 1.)

47-5-43. Provisions for early and normal retirement ages.

Each member employer may provide in its plan for early and normal retirement ages. A member employer may defer the retirement of an employee who has reached normal retirement age. (Code 1981, § 47-5-43, enacted by Ga. L. 1984, p. 1041, § 11.)

47-5-44. Credit for prior service.

Each member employer that has adopted a plan providing retirement benefits under Code Section 47-5-40 is authorized in its plan and contract to determine what credit, if any, shall be allowed for prior service. The financial liability incurred by the member employer for any such prior service credits allowed shall be actuarially determined and incorporated in the contract, which shall set forth the manner in which such liability shall be defrayed by the member employer. (Code 1981, § 47-5-44, enacted by Ga. L. 1984, p. 1041, § 11.)

47-5-45. Uninterrupted participation during transfer from one member municipality to another.

The board of trustees may provide rules under which contracts with member employers may provide for uninterrupted participation by a participating employee who transfers his employment from one member municipality to another. (Code 1981, § 47-5-45, enacted by Ga. L. 1984, p. 1041, § 11.)

47-5-46. Transfer of credits.

Member employers which provide retirement benefits under a local or special Act may contract with the board of trustees for transfer of credits to this retirement system and continuation of accrued benefits to their employees under terms which may be provided by amendment to such local or special Act and which are not inconsistent with this chapter or rules or regulations adopted pursuant to this chapter. Otherwise, this chapter is not intended to affect existing retirement or pension systems established by local or special Act or to preclude the establishment of individual employer retirement systems by future local or special Acts. (Code 1981, § 47-5-46, enacted by Ga. L. 1984, p. 1041, § 11.)

47-5-47. Return of contributions to employee or employee's estate.

Plans providing for retirement benefits established under this chapter shall provide that mandatory contributions made by a participating employee shall be returned to such employee or his estate in the event of death before retirement. If the employee is separated from employment prior to the time he is eligible for retirement benefits, such contributions shall be returned unless the employee chooses to claim his vested benefits, in which case the employee contributions shall remain with the fund until such time as the employee becomes eligible for the vested benefits. Such contributions may be returned without interest or with such interest as is provided in the plan. (Code 1981, § 47-5-47, enacted by Ga. L. 1984, p. 1041, § 11.)

ARTICLE 4**MISCELLANEOUS PROVISIONS****47-5-70. Creation of debts of the state under this chapter.**

Nothing in this chapter shall create a debt of the State of Georgia. (Ga. L. 1965, p. 421, § 25; Ga. L. 1988, p. 387, § 1.)

47-5-71. Exemption from levy, attachment, or other process of funds held by the board of trustees or for its account; assignment of benefits or contracts established under this chapter.

Funds held by the board of trustees or for its account shall not be subject to process, levy, or attachment; nor shall benefits arising under this chapter or any contract pursuant to this chapter be assignable. (Ga. L. 1965, p. 421, § 26.)

RESEARCH REFERENCES

ALR. — Employee retirement pension attachment, levy, execution, or similar proceedings, 93 ALR3d 711.

47-5-72. Exemption of chapter from regulation under Title 33.

Except as otherwise specified in this chapter, the provision of retirement benefits and employee benefits pursuant to this chapter shall not be subject to regulation under Title 33. (Code 1981, § 47-5-72, enacted by Ga. L. 1984, p. 1041, § 12; Ga. L. 2000, p. 131, § 1.)

CHAPTER 6

GEORGIA LEGISLATIVE RETIREMENT SYSTEM

Article 1

General Provisions

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47-6-1. Definitions.

Article 2

Creation, Administration, and Management of the Assets of the Retirement System

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- 47-6-21. Creation of the office of executive secretary.
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Membership in the Retirement System

- 47-6-40. Qualifications for membership; membership of persons who cease to become members of the General Assembly before age 60; termination of membership.
- 47-6-41. Transition of membership from Georgia Legislative Retirement System to Employees' Retirement System of Georgia; current beneficiaries; state contributions; rules and regulations [Repealed].
- 47-6-42. State contributions.

Article 4

Employee and Employer Contributions to the Retirement System

- 47-6-60. Employee contributions to the

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retirement system; payment of employee contributions on behalf of the member; additional contributions.

Article 5

Service Creditable Toward Retirement

- 47-6-70. Creditable service.
- 47-6-70.1. Prior service credit for military service.
- 47-6-70.2. Reestablishment of creditable service by current members who ceased being members of General Assembly and who withdrew retirement contributions.

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Retirement, Retirement Allowances, and Death Benefits

- 47-6-80. Eligibility and application for a retirement allowance; early retirement; amount of retirement allowance; increases in retirement allowance.
- 47-6-81. Optional retirement allowances.
- 47-6-82. Manner in which retirement allowances to be paid; termination of payments upon death.
- 47-6-83. Payments made upon the death of a member, upon death of a beneficiary who has not elected an optional retirement allowance, or upon death of a member before retirement.
- 47-6-84. Termination of retirement allowance upon return to service; retirement benefits for retired members returning to service in the General Assembly.
- 47-6-85. Refund of accumulated contributions upon termination of membership.

Article 7

Miscellaneous Provisions

- 47-6-100. Exemption of rights and benefits

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from taxation; exemption from legal process; assignability.

statements or falsified records; adjustment of erroneous payments.

47-6-101. Attempts to defraud the retirement system by means of false

OPINIONS OF THE ATTORNEY GENERAL

Credit as membership service in determining involuntary separation benefit eligibility. — Service as a member of the General Assembly after January 1, 1954, paid for as membership service in the Legislative Retirement System and transferred to the Employees' Retirement System is creditable as

membership service for determination of eligibility for the involuntary separation benefits provided by Ga. L. 1972, p. 360, § 3 and Ga. L. 1953, Nov.-Dec. Sess., p. 160, § 2 (see O.C.G.A. §§ 47-2-123 and 47-2-124). 1973 Op. Att'y Gen. No. U73-17.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1166 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 311 et seq. 81A C.J.S., States, § 211 et seq.

ALR. — Reasonableness of classification, as regards beneficiaries, by statute providing for retirement fund or pension for public officers or employees, 163 ALR 870.

Gift to or for employees' pension fund as valid charitable gift or trust, 28 ALR2d 428.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan, 50 ALR3d 880.

Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.

ARTICLE 1

GENERAL PROVISIONS

47-6-1. Definitions.

As used in this chapter, the term:

(1) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member or paid by the member to establish or reestablish credit for service, which amounts are credited to his or her individual account in the system, together with regular interest thereon. Beginning on January 12, 1981, this term shall include the amount of employee contributions paid by the employer on behalf of members, together with regular interest thereon, excluding employee contributions paid by the employer for group term life insurance coverage.

(2) "Beneficiary" means any person in receipt of a retirement allowance or other benefit as provided by the system.

(3) "Board" means the Board of Trustees of the Employees' Retirement System of Georgia; provided, however, that if any member of such

board of trustees is an active or retired member or a beneficiary of this retirement system, he or she shall not serve as a member of the board of trustees of this retirement system.

(4) “Creditable service” means prior service and membership service for which credit is allowable under this chapter, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall it include any service which has been or may be credited to a member by any other public retirement system of this state.

(5) “Date of establishment” means July 1, 1967.

(6) “Member” means any person included in the membership of the system.

(7) “Membership service” means service as paid for by the member, as provided for in Code Section 47-6-60.

(8) “Prior service” means service rendered prior to January 1, 1954, as a Representative, Senator, or staff member of the General Assembly and service, day for day, on active duty in any component of the armed forces of the United States during wartime or during any conflict in which military personnel were committed by the President of the United States, provided that no such service in excess of five years shall be creditable.

(8.1) “Prior service” shall also include military service which is creditable under Code Section 47-6-70.1.

(9) “Retirement allowance” means monthly payments for life pursuant to Code Section 47-6-80.

(10) “Staff members” means the Secretary of the Senate, the Clerk of the House of Representatives, and the messenger and doorkeeper for each of the two houses of the General Assembly.

(11) “System” means the Georgia Legislative Retirement System. (Ga. L. 1967, p. 259, § 1; Ga. L. 1968, p. 1354, § 1; Ga. L. 1972, p. 704, § 1; Ga. L. 1980, p. 611, § 1; Ga. L. 1980, p. 925, § 6; Ga. L. 1983, p. 1856, § 2; Ga. L. 1985, p. 209, § 1; Ga. L. 1986, p. 30, § 1; Ga. L. 2000, p. 1277, § 1; Ga. L. 2009, p. 947, § 24/HB 202.)

The 2009 amendment, effective May 11, 2009, substituted “or paid by the member to establish or reestablish credit for service, which amounts are credited to his or her” for “and credited to his” near the middle of paragraph (1).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 311 et seq. 81A C.J.S., States, § 213 et seq.

ARTICLE 2

CREATION, ADMINISTRATION, AND MANAGEMENT OF THE
ASSETS OF THE RETIREMENT SYSTEM

Administrative rules and regulations. — State of Georgia, Georgia Legislative Retirement System, Chapter 513-3-1.
Rules of General Applicability, Official Compilation of the Rules and Regulations of the

47-6-20. Creation and administration of the retirement system; commencement of operations; corporate powers and privileges; name in which retirement system to transact business.

(a) A retirement system is created and placed under the administration of the Board of Trustees of the Employees' Retirement System of Georgia to provide retirement allowances and other benefits for members of the General Assembly. The system shall begin operation as of July 1, 1967.

(b) The system shall have the power and privileges of a corporation and shall be known as the "Georgia Legislative Retirement System." By such name all of its business shall be transacted, all of its funds shall be invested, and all of its cash, securities, and other property shall be held. (Ga. L. 1967, p. 259, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1166 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 58.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 81A C.J.S., States, §§ 98 et seq., 213 et seq., 221 et seq., 254 et seq.

47-6-21. Creation of the office of executive secretary.

There is created an office to be known as the "executive secretary of the Georgia Legislative Retirement System." The director of the Employees' Retirement System of Georgia shall serve as executive secretary of this system. (Ga. L. 1967, p. 259, § 14.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244 et seq.
C.J.S. — 70 C.J.S., Pensions, § 10 et seq.

47-6-22. Powers and duties of the board of trustees.

(a) The general administration and responsibility for the proper operation of the system and for putting this chapter into effect are vested in the board.

(b) The board shall engage such actuarial and other services as shall be required to transact the business of the system.

(c) The board shall designate an actuary who shall be the technical adviser of the board on matters regarding the operation of the system and shall perform such other duties as are required in connection therewith.

(d) At least once in each five-year period following the date of establishment, the actuary shall make an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the system and shall make a valuation of the contingent assets and liabilities of the system. The board, after taking into account the results of such investigation and valuation, shall adopt for the system such mortality, service, and other tables as shall be deemed necessary.

(e) On the basis of regular interest and tables adopted by the board, the actuaries shall make valuations of the contingent assets and liabilities of the system at least once every three years.

(f) The board shall keep in convenient form such data as shall be necessary for the actuarial valuations of the contingent assets and liabilities of the system and for checking the experience of the system.

(g) The board shall determine, from time to time, the rate of regular interest for use in all calculations, with the rate of 4 percent per annum applicable unless changed by the board.

(h) Subject to the limitations of this chapter, the board shall, from time to time, establish rules and regulations for the administration of the system and for the transaction of business.

(i) The board shall keep a record of all of its proceedings under this chapter, which record shall be open to the public.

(j) All persons employed by the board and the expenses of the board shall be paid from funds appropriated to the General Assembly. (Ga. L. 1967, p. 259, § 3; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “adviser” for “advisor” in the middle of subsection (c).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 81A C.J.S., States, §§ 213 et seq., 221 et seq., 254 et seq.

47-6-23. Investment powers of board; members' and employees' dealings with funds; vouchers for payments.

(a) The board shall be the trustee of the funds of the system; may invest and reinvest such funds; and may hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created under this chapter shall have been invested, as well as the proceeds of such investments and any moneys belonging to such fund, all in such manner as funds of the Employees' Retirement System of Georgia are invested and reinvested.

(b) Except as otherwise provided for in this chapter, no member or person employed by the board shall have a direct interest in the gains or profits of any investment made by the board. No member or employee of the board shall, directly or indirectly, for himself or as an agent, in any manner use the funds of the system except to make such current and necessary payments as are authorized by the board; nor shall any member or employee of the board become an endorser, surety, or in any manner an obligor for moneys loaned or borrowed from the board.

(c) The board shall be the custodian of the funds of the system. All payments from such funds shall be made by the board only upon vouchers signed by two persons designated by the board. (Ga. L. 1967, p. 259, §§ 15, 16; Ga. L. 2000, p. 131, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1166 et seq., 1244 et seq.

C.J.S. — 67 C.J.S., Officers and Public

Employees, §§ 244 et seq., 259 et seq. 70 C.J.S., Pensions, § 7 et seq. 81A C.J.S., States, §§ 213 et seq., 221 et seq., 254 et seq., 275.

47-6-24. Members' account; accumulation account; crediting of interest and dividends.

(a) All of the assets of the system shall be credited, according to the purpose for which they are held, to either the members' account or the accumulation account. The benefits under this chapter and all administrative expenses shall be paid from such accounts.

(b) The members' account shall be the account in which the contributions made by members and regular interest credited on such amounts shall be held.

(c) The accumulation account shall be the account in which all reserves for the payment of the part of all retirement allowances and other benefits payable from contributions made by the state shall be held and from which all retirement allowances payable under the system and the administrative expenses shall be paid. All interest and dividends earned on the funds of the system shall be credited to the accumulation account. (Ga. L. 1967, p. 259, § 17; Ga. L. 2005, p. 535, § 18/HB 460.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244 et seq. **C.J.S.** — 70 C.J.S., Pensions, § 10 et seq.

47-6-25. Plan year designated.

For purposes of complying with federal Internal Revenue Service rules and regulations, the plan year for this retirement system shall be the 12 month period beginning on July 1 of each year. (Code 1981, § 47-6-25, enacted by Ga. L. 2009, p. 947, § 25/HB 202.)

Effective date. — This Code section became effective May 11, 2009.

ARTICLE 3

MEMBERSHIP IN THE RETIREMENT SYSTEM

47-6-40. Qualifications for membership; membership of persons who cease to become members of the General Assembly before age 60; termination of membership.

(a) All persons who are members of the General Assembly on July 1, 1967, shall become members of the system as of such date, except that within six months from such date any such person may irrevocably elect not to be a member of the system. All other persons shall become members of the system on taking office as members of the General Assembly. Staff members shall have the option to become members of the system under the same conditions as elected members of the General Assembly.

(b) If a member of the system ceases to be a member of the General Assembly before attaining age 60 and for reasons other than death, such member, unless he or she withdraws his or her contributions pursuant to Code Section 47-6-85, shall continue as a noncontributing member of the system. Any such noncontributing member shall not gain any additional membership service. If he or she again becomes a member of the General Assembly and a contributing member of the system, such member shall retain the membership service previously credited to him or her. If a member subject to this subsection withdraws his or her contributions upon

ceasing to be a member of the General Assembly, any membership service credited to him or her at the time such contributions are withdrawn shall be forfeited and may not be reestablished if he or she again becomes a member of the General Assembly.

(c) Should any member of the system in any period of five consecutive years after becoming a member be absent from service more than four years, withdraw his or her contributions or become a beneficiary of such system, or die, he or she shall thereupon cease to be a member. (Ga. L. 1967, p. 259, § 4; Ga. L. 1971, p. 930, § 1; Ga. L. 1980, p. 611, § 2; Ga. L. 2010, p. 1207, § 51/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted former subsection (b) which read: “Any other provisions of law to the contrary notwithstanding, any person who was a member of the General Assembly on April 1, 1971, and who elected not to be a member of the system as provided for in subsection (a) of this Code section could elect, on or before April 30, 1971, to become a member of the system and, upon so electing, become a member under the same conditions as any other member. In order for any such member to receive credit for membership service such member must make the required contributions for such periods, plus interest at the rate of 4 1/4 percent per annum from the time such contributions would have been made had he been a member at that time.”; redesignated former subsections (c) and (d) as present subsections (b) and (c), respectively; and inserted “or she” and “or her” throughout present subsections (b) and (c).

Editor’s notes. — Ga. L. 2010, p. 1207, § 51, which amended this Code section, purported to amend Code Section 47-6-42 but actually amended Code Section 47-6-40.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

OPINIONS OF THE ATTORNEY GENERAL

Persons newly elected to the 1969 session of the General Assembly must become members of the system. 1969 Op. Att’y Gen. No. 69-41.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1166.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 81A C.J.S., States, §§ 158 et seq., 211 et seq.

47-6-41. Transition of membership from Georgia Legislative Retirement System to Employees’ Retirement System of Georgia; current beneficiaries; state contributions; rules and regulations.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 52, effective July 1, 2010.

Editor's notes. — This Code section was based on Ga. L. 1971, p. 107, § 1; Ga. L. 1972, p. 704, § 2; Ga. L. 1992, p. 477, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-6-42. State contributions.

After April 13, 1979, the contributions of the state under this Code section to this system shall be determined by the board each year on the basis of the most recent actuarial valuation. The board shall certify to the legislative fiscal officer the amount of the state's contributions due to the system. The state's contributions shall be paid from funds appropriated to the legislative branch of government and shall be in an amount determined by the board to be necessary to cover the costs of financing and administering the system. The legislative fiscal officer is directed to pay to the board the contributions of the state together with an amount necessary to cover the required employer contributions for social security coverage. (Ga. L. 1979, p. 931, § 3; Ga. L. 1980, p. 611, §§ 7, 8; Ga. L. 1984, p. 758, § 2; Ga. L. 1988, p. 1476, § 1; Ga. L. 1989, p. 52, § 1; Ga. L. 2005, p. 535, § 19/HB 460; Ga. L. 2010, p. 1207, § 53/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted former subsections (a) and (b); deleted the subsection (c) designation; and deleted former subsections (d) and (e).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any

way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

JUDICIAL DECISIONS

Transfer of legislative service. — Employees Retirement System (ERS) did not have implicit authority to transfer accounts from the legislative Retirement System to the ERS. *Employees Retirement Sys. v. Evans*, 211 Ga. App. 448, 439 S.E.2d 690 (1993), rev'd on other grounds, 264 Ga. 729, 450 S.E.2d 195 (1994).

State employee was entitled to credit to-

ward retirement under the Employee's Retirement System (ERS) that portion of the employee's legislative career during which the employee was a member of ERS and the time the employee spent as a member of ERS while serving as Commissioner of Insurance; however, there was no statutory authorization that permitted the employee to use legislative time served while a member of the

Legislative Retirement System toward retirement benefits under ERS; reversing in part, *Employees' Retirement Sys. v. Evans*, 211 Ga. App. 448, 439 S.E. 690 (1993). *Employees' Retirement Sys. v. Evans*, 264 Ga. 729, 450 S.E.2d 195 (1994).

ARTICLE 4

EMPLOYEE AND EMPLOYER CONTRIBUTIONS TO THE RETIREMENT SYSTEM

47-6-60. Employee contributions to the retirement system; payment of employee contributions on behalf of the member; additional contributions.

(a) Each member shall contribute 7 1/2 percent of his monthly salary. Such contributions shall be made through payroll deductions by the legislative fiscal officer.

(b) Every member shall be deemed to consent and agree to the deductions made and provided for in this Code section; and payment of salary or compensation less such deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payments, except as to the benefits provided under the system.

(c) Each of the amounts so deducted shall be credited to the individual account of the member from whose compensation the deduction was made.

(d) From and after January 12, 1981, the employer shall pay to the system on each and every payroll period employee contributions and group term life insurance contributions on behalf of and to the credit of members in an amount equal to the amount which would be paid pursuant to Code Section 47-2-54 if the member were a member of the Employees' Retirement System of Georgia. Such members shall have the additional amount of employee contributions required by this chapter deducted by the legislative fiscal officer from their monthly salary.

(e) All members shall retain, have, and be subject to all other rights, privileges, obligations, and duties provided for by other provisions of this chapter; and all such other provisions shall remain in full force and effect with respect to any matter not specifically provided for in this Code section.

(f) In addition to the employee contributions required by subsections (a) and (d) of this Code section, effective July 1, 1986, each member shall contribute 1 percent of the member's monthly salary to the system. Such members shall have such additional amount of employee contributions required by this subsection deducted by the legislative fiscal officer from their monthly salary along with the other deduction from such salary made by said legislative fiscal officer pursuant to subsections (a) and (d) of this Code section. (Ga. L. 1967, p. 259, § 12; Ga. L. 1979, p. 931, § 2; Ga. L.

1980, p. 611, § 6; Ga. L. 1980, p. 925, § 8; Ga. L. 1986, p. 1255, § 1; Ga. L. 1987, p. 146, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 313. 81A C.J.S., States, § 213 et seq.

ARTICLE 5

SERVICE CREDITABLE TOWARD RETIREMENT

Administrative rules and regulations. — State of Georgia, Georgia Legislative Retirement System, Chapter 513-3-1.
Rules of General Applicability, Official Compilation of the Rules and Regulations of the

47-6-70. Creditable service.

(a) The creditable service of a member shall include all established creditable prior service and service as a member of the General Assembly since he last became a contributing member of the system, in respect to which he makes contributions to the system. It shall also include, in the case of a member who became such on July 1, 1967, and remained a contributing member of the system continuously thereafter until his death or his retirement under the system or until he otherwise separates from service.

(b) Any member who has prior service as a member of the General Assembly rendered after July 1, 1967, for which creditable service under this retirement system has not been obtained shall receive creditable service for such prior service subject to the following conditions and requirements:

(1) The prior service as a member of the General Assembly must have been rendered while the member was a contributing member of either this retirement system or the Employees' Retirement System of Georgia;

(2) Employee contributions made by the member during the period of such prior service must not have been withdrawn by the member; and

(3) Creditable service obtained under this subsection shall be applicable only to the Georgia Legislative Retirement System and shall have no application whatsoever to the Employees' Retirement System of Georgia or to any rights retained under that retirement system pursuant to the provisions of subsection (d) of Code Section 47-6-42. (Ga. L. 1967, p. 259, § 5; Ga. L. 1988, p. 1476, § 2.)

Cross references. — Creditable service not allowed for military service from which discharge was other than honorable, § 47-1-11.
that language which was intended to follow the word "include" in the second sentence of subsection (a) was omitted from Ga. L. 1967, p. 259, § 5.

Code Commission notes. — It appears

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1168, 1192 et seq. **C.J.S.** — 81A C.J.S., States, § 216.

47-6-70.1. Prior service credit for military service.

Any member who served on active duty in the armed forces of the United States during any period when a military draft was in effect and who was honorably discharged from military service may receive prior service credit under this chapter for such active duty military service subject to the following conditions and requirements:

(1) This Code section shall apply only to those members who have eight or more years of creditable service under this chapter;

(2) Prior service credit for military service under this Code section may be obtained under a ratio of one year of credit for military service for each five years of creditable service, not considering creditable service under this Code section, or, for military service of less than a full year, under a ratio of credit for one month of military service for each five months of creditable service;

(3) No prior service credit for military service may be obtained under this Code section if credit for such military service has been or may be obtained under any other provision of this chapter;

(4) No prior service credit for military service may be obtained under this Code section if such military service has been or may be used in the determination of the member's eligibility for retirement benefits or allowances under any other state retirement or pension system, any retirement or pension system of a political subdivision, or any federal retirement or pension program, except social security and those retirement programs covered under Public Law 810, 80th Congress, as amended;

(5) The total amount of prior service credit for military service may not exceed five years for all military service which is creditable as prior service under this chapter; and

(6) The member must pay to the board of trustees the regular employee contribution of 7 1/2 percent of compensation based on the compensation received by members of the General Assembly during legislative sessions at the time the military service was rendered plus interest on such employee contributions at the rate of 7 percent per annum compounded annually from the time the military service was rendered until the date of payment. (Code 1981, § 47-6-70.1, enacted by Ga. L. 1983, p. 1856, § 3; Ga. L. 1993, p. 86, § 1.)

U.S. Code. — Public Law 80-810 is the Army and Air Force Vitalization and Retirement Equalization Act of 1948 (See 10 U.S.C. § 8010 et seq.).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 81A C.J.S., States, § 216.

47-6-70.2. Reestablishment of creditable service by current members who ceased being members of General Assembly and who withdrew retirement contributions.

Any current member who had previously ceased to be a member of the General Assembly and who withdrew accumulated contributions from the retirement system pursuant to Code Section 47-6-85 may reestablish as creditable service the total creditable service possessed by the member at the time of such withdrawal of accumulated contributions by paying to the board of trustees the amount of accumulated contributions which were withdrawn plus regular interest on such amount compounded annually from the date of the withdrawal of such contributions to the date of payment. (Code 1981, § 47-6-70.2, enacted by Ga. L. 1990, p. 534, § 1.)

ARTICLE 6

RETIREMENT, RETIREMENT ALLOWANCES, AND DEATH BENEFITS

Administrative rules and regulations. — State of Georgia, Georgia Legislative Retirement System, Chapter 513-3-1.
Rules of General Applicability, Official Compilation of the Rules and Regulations of the

47-6-80. Eligibility and application for a retirement allowance; early retirement; amount of retirement allowance; increases in retirement allowance.

(a) Upon the written application to the board, any member of the system who (1) has attained age 65 and has completed eight or more years of creditable service or (2) has attained age 62 and has completed eight or more years of membership service shall be retired by the board on a retirement allowance and shall thereupon become a beneficiary of the system, provided that he is no longer in the service of the state, whether as a member of the General Assembly or otherwise. In lieu of eight years of service, a member may substitute four terms of office in the General Assembly.

(b) The effective date of retirement shall be the first day of the month in which the application is received by the board, but such effective date shall not, in any case, be earlier than the first day of the month following the final month of the applicant's employment. Applications for retirement shall not

be accepted more than 90 days in advance of the effective date of retirement.

(c) Normal retirement age for a member with at least eight years of membership service shall be the date the member has reached 62 years of age. Normal retirement age for a member with less than eight years of membership service but with at least eight years of creditable service shall be the date the member has reached 65 years of age. Any member of the system who has completed eight or more years of membership service and who has attained age 60 may elect to retire prior to age 62, provided that in such event, the member's retirement allowance shall be reduced by 5 percent for each year below age 62.

(d) Upon such retirement under subsection (a) of this Code section, the retired member shall receive a monthly service retirement allowance which shall be equal to \$28.00 multiplied by the number of years of the member's creditable service.

(e) Any increase in benefits payable under the retirement system which becomes effective as a result of a change in the benefit formula provided for by subsection (d) of this Code section shall be applicable to beneficiaries of the system who are receiving benefits at the time the increase becomes effective.

(f) Subject to the terms and limitations of this Code section, the board of trustees is authorized to adopt from time to time a method or methods of providing for increases in the retirement allowance provided in subsection (d) of this Code section for persons theretofore or thereafter retiring under this article. Such method shall be based upon:

- (1) The recommendation of the actuary of the board of trustees;
- (2) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and
- (3) Such other factors as the board deems relevant;

provided, however, that any such increase shall be uniform and shall apply equally to all members of this retirement system.

(g) Notwithstanding any other provision of this Code section, no member who becomes a member of this retirement system on or after July 1, 2009, shall be entitled to receive any postretirement benefit adjustment. (Ga. L. 1967, p. 259, § 6; Ga. L. 1968, p. 1354, § 2; Ga. L. 1971, p. 930, § 2; Ga. L. 1979, p. 931, § 1; Ga. L. 1980, p. 611, § 3; Ga. L. 1986, p. 1255, § 2; Ga. L. 1990, p. 510, § 1; Ga. L. 2000, p. 1277, § 2; Ga. L. 2009, p. 320, § 3/HB 452; Ga. L. 2009, p. 947, § 26/HB 202.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, added subsection (g). The second 2009 amendment, effective May 11, 2009, in subsection

(c), added the first two sentences and substituted “the member’s” for “his” near the end of the last sentence.

Editor’s notes. — Ga. L. 2009, p. 320, § 1, not codified by the General Assembly, provides that: “The General Assembly is desirous of providing an established annual cost-of-living adjustment to all current active and retired members of the Employees’ Re-

tirement System of Georgia, the Georgia Legislative Retirement System, and the Georgia Judicial Retirement System. In order to do so, limiting future liability of the systems by adjusting the retirement expectations of persons who are newly employed is a regrettable but necessary step toward fiscal soundness.”

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1174 et seq., 1192 et seq., 1228 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq. 81A C.J.S., States, § 216 et seq.

47-6-81. Optional retirement allowances.

(a) Until the first payment on account of the retirement allowance becomes normally due, any beneficiary may elect, by filing written application with the board, to convert the retirement allowance otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value under one of the optional forms named below:

(1) Option One shall consist of a reduced retirement allowance payable during the beneficiary’s life, with the provision that the reduced allowance shall continue after his death to and for the life of the contingent beneficiary designated by him in such application, if such contingent beneficiary survives him; and

(2) Option Two shall consist of a reduced retirement allowance payable during the beneficiary’s life, with the provision that one-half of the reduced allowance shall continue after his death to and for the life of the contingent beneficiary designated by him in such application, if such contingent beneficiary survives him.

(b) Any other provisions of this Code section or of this chapter to the contrary notwithstanding, the board of trustees may, by rule or regulation, require that when a member or a retired member dies and the beneficiary is a person other than the surviving spouse of the member, the benefits payable to the beneficiary shall be paid to the beneficiary within a definite time period immediately following the death of the member or retired member. For purposes of this Code section, the term “equivalent actuarial value” means a benefit of equivalent value when computed upon the bases of the mortality tables and rates of interest adopted for such purpose by the board of trustees. (Ga. L. 1967, p. 259, § 7; Ga. L. 1984, p. 810, § 4; Ga. L. 2000, p. 131, § 1; Ga. L. 2005, p. 535, § 20/HB 460; Ga. L. 2006, p. 93, § 1/SB 466.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1198 et seq., 1228. **C.J.S.** — 70 C.J.S., Pensions, §§ 10, 12 et seq., 15. 81A C.J.S., States, § 218 et seq.

47-6-82. Manner in which retirement allowances to be paid; termination of payments upon death.

All retirement allowances shall be paid in monthly installments and shall cease with the month in which the death of the beneficiary occurs, except as otherwise provided in Code Section 47-6-81. (Ga. L. 1967, p. 259, § 8; Ga. L. 2005, p. 535, § 21/HB 460.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1224 et seq., 1244 et seq.

47-6-83. Payments made upon the death of a member, upon death of a beneficiary who has not elected an optional retirement allowance, or upon death of a member before retirement.

(a) Upon the death of any member of the system, a lump sum amount shall be paid to such person as he has nominated by written designation, filed with the board, otherwise to his estate. Such lump sum amount shall be equal to the amount of his accumulated contributions.

(b) Upon the death of a beneficiary who has not elected an optional form of allowance under Code Section 47-6-81, a lump sum amount shall be paid to such person as he has last nominated by written designation, filed with the board, otherwise to his estate. Such lump sum amount shall be equal to the excess, if any, of his accumulated contributions at the time his allowance commenced over the sum of the retirement allowance payments made to him.

(c) Upon the death before retirement of a member of the system otherwise eligible for retirement or of a member with 15 years of creditable service, the person nominated by him to receive the lump sum amount in subsection (a) of this Code section shall receive, in lieu of such lump sum payment, an allowance for life in the same amount as if the deceased member had retired at the time of his death and had named such person as contingent beneficiary under Option One of Code Section 47-6-81. If the person nominated is not living at the death of the deceased member, the accumulated contributions shall be paid to the estate of the deceased member. (Ga. L. 1967, p. 259, § 10; Ga. L. 1968, p. 1354, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1197 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 319 et seq. 81A C.J.S., States, § 218.

47-6-84. Termination of retirement allowance upon return to service; retirement benefits for retired members returning to service in the General Assembly.

(a)(1) Except as provided in paragraph (2) of this subsection, if any retired member who has not yet reached normal retirement age returns to the service of the state in any position, including, without limitation, service directly or indirectly as or for an independent contractor, except as a member of the General Assembly, the member's retirement allowance shall cease. Upon cessation of such service, the retired member, after proper notification to the board, shall receive the same retirement allowance which the member was receiving prior to returning to state service.

(2) Notwithstanding any other provisions in this chapter to the contrary, the retirement allowance of a retired member who has reached normal retirement age or has not been employed by or rendered service for the state and who returns to the service of the state in any position, including, without limitation, service directly or indirectly as or for an independent contractor, other than as a member of the General Assembly shall not cease provided that such member performs no more than 1,040 hours of such service in any calendar year.

(b)(1) If a retired member returns to service as a member of the General Assembly after the member has reached normal retirement age, the retired member may either continue to receive a retirement benefit while serving as a member of the General Assembly or reestablish active membership in the retirement system. If the election is to reestablish active membership in the retirement system, the member shall have the same creditable service which the member possessed at the time of retirement and shall accumulate additional creditable service so long as such active membership continues. Except as otherwise provided by paragraph (2) of this subsection, a retired member who returns to service in the General Assembly shall make the election provided for in this paragraph within 30 days after taking office. Such election shall be made in writing to the board of trustees and shall be irrevocable. If a retired member returns to service as a member of the General Assembly before the member has reached normal retirement age, the retired member shall reestablish active membership in the retirement system. The member shall have the same creditable service which the member possessed at the time of retirement and shall accumulate additional creditable service so long as such active membership continues.

(2) A retired member who returned to service in the General Assembly prior to the existence of the option to reestablish active membership in the retirement system shall have the right to make the election provided for in paragraph (1) of this subsection at any time prior to January 1, 1991. In addition to creditable service provided for in paragraph (1) of this subsection, any such retired member who elects to reestablish active membership in the retirement system may obtain creditable service for service in the General Assembly rendered from the time of returning to service in the General Assembly until the date of reestablishing active membership in the retirement system. In order to obtain such creditable service, the member shall pay to the board of trustees the employee contributions which would have been paid to the retirement system during the period for which such creditable service is claimed, plus regular interest thereon compounded annually from the time the service in the General Assembly was rendered until the date of payment. (Ga. L. 1967, p. 259, § 11; Ga. L. 1980, p. 611, § 5; Ga. L. 1990, p. 534, § 2; Ga. L. 1992, p. 2748, § 1; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2009, p. 947, § 27/HB 202.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” at the end of paragraph (a)(2). The second 2009 amendment, effective May 11, 2009, rewrote subsection (a); and, in paragraph (b)(1), inserted “after the member has reached normal retirement age” near the beginning of the first sentence, substituted “so long” for “as long” near the end

of the second sentence, and added the last two sentences. See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — The amendment of this Code section by Ga. L. 2009, p. 752, § 1, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 947, § 27. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1226.

C.J.S. — 67 C.J.S., Officers and Public

Employees, § 311 et seq. 81A C.J.S., States, § 216.

47-6-85. Refund of accumulated contributions upon termination of membership.

Except as otherwise provided in Article 2 of Chapter 1 of this title, a member's accumulated contributions shall be 100 percent vested and nonforfeitable at all times. Upon the request of a member who ceases to be a member of the system for reasons other than retirement or death, the member shall be paid the member's accumulated contributions as soon as feasible after such request. If the member dies before payment has been made, the amount of the member's accumulated contributions shall be paid to such person as the member has nominated by written designation filed with the board, otherwise to the member's estate. (Ga. L. 1967, p. 259,

§ 9; Ga. L. 1980, p. 611, § 4; Ga. L. 1980, p. 925, § 7; Ga. L. 2009, p. 947, § 28/HB 202.)

The 2009 amendment, effective May 11, 2009, added the first sentence; and, throughout this Code section, substituted “the member” for “he” and substituted “the member’s” for “his”.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1198 et seq. Employees, § 313 et seq. 81A C.J.S., States, § 218.
C.J.S. — 67 C.J.S., Officers and Public

ARTICLE 7

MISCELLANEOUS PROVISIONS

47-6-100. Exemption of rights and benefits from taxation; exemption from legal process; assignability.

The right of a person to a retirement allowance or to the return of contributions, a retirement allowance itself, any optional allowance or payment on death, or any other right accrued or accruing to any person under this chapter and the moneys of the system are exempted from any state or municipal tax; are exempted from levy and sale, garnishment, attachment, or any other process whatsoever; and shall be unassignable except as otherwise specifically provided for in this chapter. (Ga. L. 1967, p. 259, § 18.)

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 444 et seq. benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711.
ALR. — Employee retirement pension

47-6-101. Attempts to defraud the retirement system by means of false statements or falsified records; adjustment of erroneous payments.

- (a) Any person who knowingly makes any false statements or falsifies or permits to be falsified any records of the system in any attempt to defraud the system, as a result of such an act, shall be guilty of a misdemeanor and, on conviction, shall be punished by a fine not to exceed \$500.00, imprisonment not to exceed 12 months, or both.
- (b) If any change or error in the records results in any member or beneficiary receiving from the system more or less than he would have been entitled to receive had the records been correct, the board shall have the power to correct such error and to adjust the payments as far as practicable

in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (Ga. L. 1967, p. 259, § 19.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 369.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 257. 70 C.J.S., Pensions, § 23.

CHAPTER 7

GEORGIA FIREFIGHTERS' PENSION FUND

Article 1		Sec.	
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47-7-25.	Annual audit of the fund.		Effect of failure of volunteer fire department to hold required drills; effect of volunteer firefighter's failure to meet attendance requirements.
47-7-26.	Power of board to determine eligibility for membership or retirement of any volunteer firefighter unable to attend the prescribed number of drills, meetings, and fires.	47-7-82.	Fire department employees other than firefighters or volunteer firefighters.
47-7-27.	Power of board to grant retirement benefit increases.	47-7-83.	Service credit of member who is also member of Peace Officers' Annuity and Benefit Fund.
Article 3		47-7-84.	Credit for prior eligible service by persons who are members as of September 1, 1992, or who applied for membership on or before that date.
Membership in the Fund		47-7-85.	Credit for prior eligible service by persons who are members as of July 1, 1998, or become members after that date.
47-7-40.	Eligibility to apply for membership; transfer of Georgia Class Nine Fire Department Pension Fund.	47-7-86.	Creditable service for other pension fund participation for members of Georgia Class Nine Fire Department Pension Fund [Repealed].
47-7-41.	Effect of withdrawal of contributions or termination of employment; eligibility for reinstatement; credit for time spent on leave of absence and resumption of payments to fund upon return to service.	47-7-87.	"Prior eligible service" defined; requirements.
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service upon receipt of creditable service time.

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Article 6

Retirement, Retirement Allowances,
Disability Benefits, and
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47-7-100. Eligibility for full pension benefits; eligibility for partial benefits; optional pension benefits; vesting of rights to pension benefits; early retirement provisions.

47-7-101. Eligibility for retirement benefits; withdrawal of application for benefits before approval; reemployment.

47-7-102. Eligibility for disability benefits; notice of injury; application for benefits; periodic medical examinations; termination of benefits; action contesting determination of board.

47-7-103. Benefits payable to a named beneficiary upon death of a member before benefits have commenced or before benefits equal to the member's dues have been paid.

47-7-104. Benefits payable to volunteer

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firefighters erroneously found to be eligible for such benefits.

47-7-105. Refund of contributions upon withdrawal from the fund.

Article 7

Miscellaneous Provisions

47-7-120. Reduction of benefits upon determination that available monies are insufficient; liability of members of the board for such reductions.

47-7-121. Vesting of rights to benefits.

47-7-122. Exemption of benefits under this chapter from garnishment, attachment, or other process; exemption from taxation; assignment of such benefits.

47-7-123. Exemption of assets of the board from taxation.

47-7-124. Disposition of funds abandoned by members separated from the service; notice; limitation on asserting certain claims.

47-7-125. Availability of records of local departments to board; confidentiality.

47-7-126. Penalty for false statements or falsified records; correction of errors by the board.

47-7-127. "Alternative investments" defined; code of ethics.

Cross references. — Authorization of taxation for paying pensions and other benefits and costs under a firemen's pension system or systems, Ga. Const. 1983, Art. III, Sec. X, Para. IV.

Administrative rules and regulations. — Rules of General Applicability, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Fireman's Pension Fund, Chapter 513-7-1.

OPINIONS OF THE ATTORNEY GENERAL

County firefighters may belong to both county and state system. — County firefighters are not prohibited from simultaneously belonging to both the county retirement system and the Georgia Firemen's Pension Fund. 1975 Op. Att'y Gen. No. U75-77.

Full-time firefighter's membership not lost if utilized as police officer. — A firefighter employed full time and in accordance with Ga. L. 1961, p. 417, § 1 (see O.C.G.A. § 47-7-1) would not lose the

firefighter's right to membership in the fund if the employing city utilized the firefighter as a police officer. 1971 Op. Att'y Gen. No. U71-15.

Fund is not state agency or board within purview of the Georgia administrative procedure provisions. 1974 Op. Att'y Gen. No. U74-72.

Refund of dues returns member to new member status. — If a firefighter who requested and received a refund of dues paid

into the fund fails to apply for reinstatement within six months, the firefighter may be entitled to membership, but the firefighter's status is that of a new member; the firefighter must forfeit the firefighter's credit for previous years' service. 1967 Op. Att'y Gen. No. 67-317.

Majority of members of board of trustees must agree on any action to be taken before that action is binding. 1972 Op. Att'y Gen. No. 72-103.

RESEARCH REFERENCES

ALR. — Statute of limitations in respect of action or proceeding to establish right to, or recovery of benefits of, pension, 136 ALR 809.

Reasonableness of classification, as regards beneficiaries, by statute providing for retirement fund or pension for public officers or employees, 163 ALR 870.

What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon, 14 ALR2d 634.

Gift to or for employees' pension fund as valid charitable gift or trust, 28 ALR2d 428.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan, 50 ALR3d 880.

ARTICLE 1

GENERAL PROVISIONS

47-7-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Trustees of the Georgia Firefighters' Pension Fund.

(2) "Fire department" means a full-time fire department or volunteer fire department or a combination full-time and volunteer fire department which satisfies the following criteria:

(A) The fire department is certified by the superintendent of the Georgia Firefighter Standards and Training Council as provided in Article 1 of Chapter 4 of Title 25; and

(B) The public fire suppression facilities of the fire department are ratable not less favorably than a class nine rating under standards set forth in the Fire Suppression Rating Schedule, Section I, Public Fire Suppression, Edition 6-80, Copyright 1980, published by the Insurance Services Office, a rating organization licensed by the Commissioner of Insurance, which schedule is maintained on file with the Commissioner of Insurance as required by general law and which has not been disapproved by the Commissioner, or less than a rating which the board by regulation determines is substantially equivalent under rating standards published by a rating organization licensed by the Commissioner of Insurance performing similar rating functions which standards are maintained on file with the Commissioner of Insurance and which have not been disapproved by the Commissioner.

The board may require annual certification by the chief of a fire department of the satisfaction of such requirements as a condition to the eligibility of firefighters and volunteer firefighters to become members of the fund to obtain creditable service with the fund.

(3) "Firefighter" means a person who is:

(A) A full-time employee of a fire department who in the course of his or her employment by and within a department either is a candidate for or holds a current firefighter's certificate issued under Article 1 of Chapter 4 of Title 25 and has as incident to his or her position of employment the principal duty of, and actually performs the function of, preventing and suppressing fires; provided, however, that such term shall not include persons whose primary responsibility is the performance of emergency medical services; or

(B) Appointed and regularly enrolled as a volunteer with a volunteer fire department or combination full-time and volunteer fire department which satisfies the requirements specified in subparagraph (a)(1)(D) of Code Section 25-3-23 and who, as a volunteer firefighter, has and primarily performs the principal responsibility of preventing or suppressing fires.

(3.1) "Full-time employment" means working at a permanent job position for at least 40 hours a week.

(4) "Full-time fire department" means a full-time department, bureau, division, or other organizational unit, separately organized and administered as such, of this state or any municipality or other political subdivision thereof, which organizational unit:

(A) Has, as an organizational unit, the principal responsibility to prevent and suppress fires; and

(B) Is financed by public appropriation or subscription and is not privately owned.

A full-time fire department includes the fire chief or chief operating officer of the organizational unit and only those employees who are under the direction and supervision of the fire chief or chief operating officer.

(5) "Fund" means the Georgia Firefighters' Pension Fund.

(5.1) "Part-time employment" means working at a permanent job position for less than 40 hours a week.

(6) "Volunteer fire department" means a volunteer fire department staffed by firefighters, volunteer firefighters, or a combination of firefighters and volunteer firefighters, separately organized and administered as such, of this state or any municipality or other political subdivision of this state or serving any fire district therein, which:

- (A) Has the principal responsibility to prevent and suppress fires;
- (B) Is financed by public appropriation or subscription and is not privately owned;
- (C) Holds drills and meetings of not less than eight hours monthly; and
- (D) Meets the requirements imposed by Code Section 47-7-81.

(7) “Volunteer firefighter” means an individual who is appointed and regularly enrolled as a volunteer, with or without compensation, with a fire department; who, as a volunteer firefighter, has and primarily performs the principal responsibility of preventing or suppressing fires; and who satisfies the requirements specified in subparagraph (a)(1)(D) of Code Section 25-3-23. (Ga. L. 1955, p. 339, § 1; Ga. L. 1956, p. 368, § 1; Ga. L. 1961, p. 417, § 1; Ga. L. 1974, p. 377, § 1; Ga. L. 1976, p. 241, §§ 1, 2; Ga. L. 1983, p. 1310, § 1; Ga. L. 1985, p. 209, § 1; Ga. L. 1991, p. 755, § 2; Ga. L. 1992, p. 477, § 1; Ga. L. 1994, p. 703, § 1; Ga. L. 1995, p. 27, § 1; Ga. L. 1995, p. 1064, § 1; Ga. L. 1997, p. 1376, § 1; Ga. L. 2006, p. 120, § 1/HB 749; Ga. L. 2006, p. 122, §§ 1, 2, 3, 4/HB 344; Ga. L. 2010, p. 197, §§ 1, 2/HB 1150.)

The 2010 amendment, effective July 1, 2010, in paragraph (2), inserted “or a combination full-time and volunteer fire department” in the introductory paragraph, substituted the present provisions of subparagraph (2)(A) for the former provisions, which read: “The fire department is certified by the superintendent of the Georgia Fire Academy as provided in Chapter 3 of Title 25;”, and substituted “nine” for “eight” near the beginning of subparagraph (2)(B); and, in paragraph (3), substituted “his or her” for “full-time” near the beginning of subparagraph (3)(A), in subparagraph (3)(B), substituted “volunteer fire department or combination full-time and volunteer fire department which satisfies the requirements specified in subparagraph

(a)(1)(D) of Code Section 25-3-23 and” for “class nine fire department;” near the beginning, and deleted “; and who satisfies the requirements specified in subparagraph (a)(1)(D) of Code Section 25-3-23” following “fires” at the end.

Cross references. — Volunteer firefighters for counties and municipalities, § 36-60-22.

Code Commission notes. — The amendment of former subparagraphs (A) and (B) of paragraph (3) of this Code section by Ga. L. 2006, p. 120, § 1, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 122, § 1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2006, “who is: (A) A full-time” was substituted for “who is a full-time” in paragraph (3).

OPINIONS OF THE ATTORNEY GENERAL

Full-time firefighter’s membership not lost if utilized as police officer. — Firefighter employed full time and in accordance with this statute would not lose the firefighter’s right to membership in the fund if the employing city utilized the firefighter as a police officer. 1971 Op. Att’y Gen. No. U71-15 (see O.C.G.A. § 47-7-1).

“Fireman” defined. — Scope of Georgia

Firemen’s Pension Fund’s participation should not be extended to employees who are placed on fire department’s payroll merely by local government’s administrative classification. 1982 Op. Att’y Gen. No. U82-17.

Determination of membership. — Board of Trustees of the Georgia Firemen’s Pension Fund is duly empowered to make fac-

tual determination of whether an applicant is employed by and working for a fire department or whether the applicant is merely working out of a fire department. 1982 Op. Att'y Gen. No. U82-17.

Volunteer firefighter attending required percentage of drills, meetings, and fires entitled to credit. — Volunteer firefighter who attends the annual required percentage of the composite total number of drills, meetings, and fires in a calendar year is entitled to credit for that year. 1960-61 Op. Att'y Gen. p. 325.

No credit received when unexcused absences more than 50 percent. — Volunteer firefighter may not receive credit under the fund for calendar years of service in which

the firefighter did not attend 75 percent (now 50 percent) of all drills, meetings, and fires; however, the board of trustees is authorized and empowered to excuse volunteer firefighters from the required attendance percentage at drills, meetings, and fires of their respective departments so long as the attendance is prevented by causes beyond the control of the volunteer firefighters. 1974 Op. Att'y Gen. No. U74-8.

Only actual fires included in reports of volunteer firefighter participation. — Only actual fires, and not nonfire rescue calls, should be included in reports of participation by volunteer firefighters. 1973 Op. Att'y Gen. No. U73-104.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 535 et seq.

47-7-2. Purpose of fund; legislative intent.

The fund is established as a voluntary pension system which provides benefits intended to supplement primary pension benefits provided by fire departments or the governmental units or volunteer districts establishing fire departments. It is the intent of the General Assembly in authorizing the benefits of this chapter:

(1) To provide an additional benefit which may be used by fire departments of the state or political subdivisions of the state to attract and retain qualified firefighters; and

(2) To limit the availability of such benefits to those fire departments which satisfy the minimum requirements for membership provided in this chapter so as to induce political subdivisions and the fire departments serving such political subdivisions to meet and maintain compliance with such minimum standards which the General Assembly deems essential to improving the ability of a fire department to suppress fires. (Code 1981, § 47-7-2, enacted by Ga. L. 1994, p. 703, § 2; Ga. L. 1997, p. 1376, § 1.)

ARTICLE 2

ADMINISTRATION AND MANAGEMENT OF THE ASSETS OF THE FUND

47-7-20. Membership of the board; manner of election; compensation and expenses.

(a) To carry out this chapter, there is created the Board of Trustees of the Georgia Firefighters' Pension Fund. The board shall consist of five members as follows:

- (1) The Governor or the Governor's designee;
- (2) The Commissioner of Insurance or the Commissioner of Insurance's designee;
- (3) Two active members of the fund appointed by the Governor; and
- (4) One retired beneficiary of the fund appointed by the Governor.

(b) The first members appointed by the Governor pursuant to paragraphs (3) and (4) of subsection (a) of this Code section shall be appointed to take office on July 1, 1984. One of the persons appointed pursuant to paragraph (3) of subsection (a) of this Code section and the person appointed pursuant to paragraph (4) of subsection (a) of this Code section shall each be appointed for an initial term of two years. The remaining person appointed pursuant to paragraph (3) of subsection (a) of this Code section shall be appointed for an initial term of four years. Thereafter, successors shall be appointed by the Governor to take office upon the expiration of the respective terms of office for terms of four years. All such members shall serve until their successors are appointed and qualified. In the event of a vacancy during the term of office of any such member, the Governor shall appoint a qualified person to fill such vacancy for the unexpired term.

(c) The Georgia State Firefighters' Association shall be authorized to submit to the Governor the names of nominees for each position on the board appointed by the Governor pursuant to subsection (b) of this Code section. The Governor, in making such appointments, may consider the nominees submitted by said association, but all such appointments shall be at the sole discretion of the Governor, and the Governor shall not be required to appoint members of the board from such nominees.

(d) Members of the board shall serve without pay but all members of the board shall be reimbursed for all necessary expenses that they may incur through service on the board. (Ga. L. 1955, p. 339, § 2; Ga. L. 1984, p. 828, § 1; Ga. L. 1992, p. 477, § 1; Ga. L. 1995, p. 332, § 1; Ga. L. 1997, p. 1376, § 1.)

Editor's notes. — Ga. L. 1984, p. 828, § 2, not codified by the General Assembly, provides: "The positions of membership on the Board of Trustees of the Georgia Firemen's Pension Fund existing on June 30, 1984, except for the Governor and Insurance Commissioner, shall stand abolished on July 1, 1984."

Ga. L. 1984, p. 828, § 3, provided that that Act, which amended this Code section, shall become effective July 1, 1984, except that it shall become effective upon the date of the Governor's approval (March 28, 1984) for the administrative purpose of allowing the Governor to consider appointments pursuant to the revised language of § 47-7-20.

47-7-21. Creation of the office of executive director of the board; appointment of the executive director; compensation; bond.

There is created the office of executive director of the Georgia Firefighters' Pension Fund. The executive director shall be named by the board and shall serve at the pleasure of the board. The compensation of the executive director shall be fixed by the board. He or she shall be bonded by a corporate surety in such amount as the board shall determine to be sufficient. The cost of such bond shall be paid by the fund. (Ga. L. 1955, p. 339, § 3; Ga. L. 1956, p. 368, § 3; Ga. L. 1962, p. 550, § 3; Ga. L. 1997, p. 1376, § 1; Ga. L. 2005, p. 54, § 1/HB 355.)

47-7-22. Legal adviser to the board.

The Attorney General shall act as legal adviser to the board. (Ga. L. 1955, p. 339, § 9; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted "adviser" for "advisor" near the end.

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-7-23. Powers and duties of the board generally.

(a) The board shall have the following powers and duties:

- (1) To provide for the payment of administrative expenses;
- (2) To rule upon all applications for pensions;
- (3) To provide for the payment of pensions;
- (4) To provide for the collection of all revenue under this chapter;
- (5) To make all necessary rules and regulations not inconsistent with the laws of this state for the governing of this retirement fund;

(6) To prescribe rules and regulations of eligibility of persons to receive pensions under this chapter;

(7) To expend funds in accordance with this chapter; and

(8) To exercise all other powers necessary for the administration of the fund.

(b) The board shall have the full power to invest and reinvest such funds subject to all the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the "Public Retirement Systems Investment Authority Law." Subject to such terms, conditions, limitations, and restrictions, the board shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds are invested, including the proceeds of any investments and money belonging to the fund.

(c) The board is authorized to employ agents, including, but not limited to, banks or trust departments thereof, and to contract for the services of such agents as investment advisers and counselors, in making recommendations for investments, and in making investments, if the board so authorizes.

(d) The board of trustees may invest, in certified or uncertified form, in securities of any open-end management type investment company or investment trust registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940, as now or hereafter amended, if such investment company or investment trust has been organized for not less than ten years or has assets of not less than \$200 million at the date of investment; provided, however, that the board shall not be authorized to pay any such investment company or investment trust a management fee in excess of 0.05 percent of the funds invested. (Ga. L. 1955, p. 339, § 4; Ga. L. 1963, p. 266, § 1; Ga. L. 1976, p. 241, § 3; Ga. L. 1997, p. 966, § 1; Ga. L. 2000, p. 2, § 8; Ga. L. 2001, p. 899, § 1; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted "advisers" for "advisors" in the middle of subsection (c).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retire-

ment system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

U.S. Code. — The Investment Company Act of 1940, referred to in subsection (d) of this Code section, is codified as 15 U.S.C. § 80a-1 et seq.

Administrative rules and regulations. — Rules of General Applicability, Official Compilation of the Rules and Regulations of the

State of Georgia, Georgia Fireman's Pension Fund, Chapter 513-7-1.

OPINIONS OF THE ATTORNEY GENERAL

Determination of membership. — Board of Trustees of the Georgia Firemen's Pension Fund is duly empowered to make factual determination of whether an applicant is employed by and working for a fire department or whether applicant is merely working out of a fire department. 1982 Op. Att'y Gen. No. U82-17.

Prescribe manner of reports and proof of creditable service. — Board of trustees can prescribe, by rule and regulation, the man-

ner and method of reports from fire departments and proof of creditable service by members of the fund. 1974 Op. Att'y Gen. No. U74-12.

Fund can invest in any investment legal for insurance company, and this includes a loan to a private owner of a waterworks system. 1954-56 Op. Att'y Gen. p. 600.

Trustees have power to invest funds in land and buildings used for principal home office. 1969 Op. Att'y Gen. No. 69-377.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, § 313.

47-7-24. Power of the board to accept and use any gift, grant, or bequest.

The board may take or receive any gift, grant, or bequest of money, real or personal property, or anything of value and use the same for the purposes set forth in this chapter. (Ga. L. 1955, p. 339, § 13.)

47-7-25. Annual audit of the fund.

The state auditor is directed to make an annual audit of the fund. (Ga. L. 1955, p. 339, § 9.)

47-7-26. Power of board to determine eligibility for membership or retirement of any volunteer firefighter unable to attend the prescribed number of drills, meetings, and fires.

Notwithstanding any provision in this chapter to the contrary, the board is authorized to determine the eligibility for membership in and retirement under the fund of any volunteer firefighter who, for cause beyond his control, is or was unable to attend, during any calendar year, the annual percentage of all drills, meetings, and fires prescribed by the board pursuant to Code Section 47-7-81. (Ga. L. 1961, p. 417, § 3; Ga. L. 1974, p. 377, § 2; Ga. L. 1991, p. 755, § 3; Ga. L. 1997, p. 1376, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Volunteer firefighters receive no credit for calendar years when unexcused absences more than 50 percent. — Volunteer firefighters may not receive credit under the

fund for calendar years of service in which the firefighters did not attend 75 percent (now 50 percent) of all drills, meetings, and fires; however, the board of trustees is authorized and empowered to excuse volunteer firefighters from the required attendance

percentage at drills, meetings, and fires of their respective departments so long as the attendance is prevented by causes beyond the control of the volunteer firefighters. 1974 Op. Att'y Gen. No. U74-8.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.

47-7-27. Power of board to grant retirement benefit increases.

(a) Subject to the terms and limitations of this Code section, the board of trustees is authorized to adopt from time to time a method or methods of providing for increases in the maximum monthly retirement benefit payable under Code Section 47-7-100 or 47-7-102, or both, for persons theretofore or thereafter retiring under such Code sections. Such method shall be based upon:

(1) The recommendation of the actuary of the board of trustees;

(2) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(3) Such other factors as the board deems relevant.

Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board of trustees shall determine.

(b) No increase granted pursuant to subsection (a) of this Code section shall become effective prior to July 1, 1993. Any such increase which becomes effective on July 1, 1993, shall not exceed 3 percent of the maximum monthly retirement benefit then in effect. Thereafter, such increases may be authorized effective as of January 1 and July 1 of each year; provided, however, that no such increase shall exceed 1 1/2 percent of the maximum monthly retirement benefit then in effect.

(c) No increase shall be made pursuant to subsection (a) of this Code section to become effective within six months of the effective date of any increase in the maximum retirement benefit granted by the General Assembly through amendment of Code Section 47-7-100. (Code 1981, § 47-7-27, enacted by Ga. L. 1993, p. 1047, § 1.)

ARTICLE 3

MEMBERSHIP IN THE FUND

47-740. Eligibility to apply for membership; transfer of Georgia Class Nine Fire Department Pension Fund.

(a)(1) Any person employed as a firefighter or enrolled as a volunteer firefighter is eligible to make application to the board for membership in the fund.

(2) Upon becoming a member of the fund, a firefighter or volunteer firefighter shall receive credit only from the date of his or her becoming a member of the fund.

(b) After April 1, 1989, no person who is a member of the Peace Officers' Annuity and Benefit Fund shall be eligible for membership in the fund by virtue of any employment in or appointment to a position the duties of which qualify such person for membership in the Peace Officers' Annuity and Benefit Fund.

(c) On and after July 1, 2006, the membership, assets, and administration of the Georgia Class Nine Fire Department Pension Fund created by Chapter 7A of this title shall be transferred to this pension fund, and the Georgia Class Nine Fire Department Pension Fund shall cease to exist as a separate entity. All members so transferred shall receive creditable service for all service credited under such retirement system and shall be entitled to all rights and benefits accorded to members of this retirement system.

(d) Any person who, on June 30, 2006, was an active member of the fund by virtue of holding a position other than as a certified firefighter or a candidate for such certification, in accordance with the qualifications for membership in effect on that date, shall be entitled to remain a member of the fund; provided, however, that if such person has a break in membership any future membership shall be subject to laws and regulations in effect at such time. (Ga. L. 1955, p. 339, § 5; Ga. L. 1956, p. 368, § 4; Ga. L. 1968, p. 441, § 1; Ga. L. 1976, p. 241, § 4; Ga. L. 1979, p. 364, § 1A; Ga. L. 1984, p. 990, § 2; Ga. L. 1985, p. 209, § 1; Ga. L. 1987, p. 1040, §§ 1, 2; Ga. L. 1989, p. 339, § 1; Ga. L. 1991, p. 755, § 4; Ga. L. 1993, p. 476, § 1; Ga. L. 1997, p. 1376, § 1; Ga. L. 2006, p. 120, § 2/HB 749; Ga. L. 2006, p. 122, § 5/HB 344.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, subsection (c), as enacted by Ga. L. 2006, p. 122, § 5/HB 344, was redesignated as subsection (d).

OPINIONS OF THE ATTORNEY GENERAL

For discussion on reinstatement of previous service for Firemen's Pension Fund purposes in light of Ga. L. 1979, p. 364, § 1A, see 1980 Op. Att'y Gen. No. U80-41.

Apply for membership within four months of employment. — Firefighter and volunteer firefighters must make an application to the board of trustees for membership in the fund within four months after becoming employed in order to become members of the fund. 1975 Op. Att'y Gen. No. U75-18.

Apply for membership within four months of return to fire department. — Person covered by the Firemen's Pension Fund who ceases to be a firefighter for a time and then returns to a fire department must reapply for coverage within four months after the firefighter's return if the firefighter wishes to be reinstated under Ga. L. 1968, p. 441, § 2 (see O.C.G.A. § 47-7-41), and this applies even though the firefighter left the firefighter's contributions in the fund. 1973 Op. Att'y Gen. No. U73-47.

Same limitations and restrictions applicable to re-entering member. — Member having left fire service and having withdrawn the member's contributions from the fund who subsequently again becomes a firefighter, in order to be reinstated as a member of the fund, must make an application for membership within four months from the date of becoming a firefighter; the legislature intended to apply the same limitations and restrictions to a withdrawn member who has left fire service and subsequently reenters the service as apply to a person becoming a firefighter for the first time; the legislature did not intend to discriminate between them and allow the former an unlimited time to make an application merely by virtue of past membership. 1965-66 Op. Att'y Gen. No. 66-220.

Preexisting condition. — Board may deny a claim for disability retirement benefits since the disability results from or is attrib-

utable to a preexisting condition, or is an aggravation of a preexisting condition. 1991 Op. Att'y Gen. No. 91-12.

Obtain credit for prior service by paying amount withdrawn. — Firefighter who left the fire service and withdrew the firefighter's contributions, and who later re-entered fire service, had the status of a new firefighter when the firefighter returned to fire service, and, under Ga. L. 1956, p. 368, § 4 (see O.C.G.A. § 47-7-40), has four months to apply for membership in the fund; under subsection (c), in order to obtain credit for the firefighter's prior fire service, the firefighter must pay up the amount withdrawn from the fund, together with interest thereon at 6 percent per annum. 1958-59 Op. Att'y Gen. p. 237.

Eligibility of persons under 44 years as of April 1, 1984. — Firefighter or a person who is enrolled as a volunteer firefighter who is at least 35 years of age but under 44 years of age as of April 1, 1984, and who meets all other requirements of the statute could have enrolled in the fund provided that the firefighter could have obtained credit for previous service in a sufficient amount so that when added to the service time available to age 55 totals at least 20 years and provided further that the acquired previous service is less than nine whole years. 1987 Op. Att'y Gen. No. 87-5 (decided under former paragraph (a)(2), which was deleted by the 1987 amendment).

There is no ambiguity created by reference to April 1, 1984, as the date for determining age of eligibility, even though the statute did not become effective until July 1, 1984. 1987 Op. Att'y Gen. No. 87-5 (decided under former paragraph (a)(2), which was deleted by the 1987 amendment).

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, § 321.

47-7-41. Effect of withdrawal of contributions or termination of employment; eligibility for reinstatement; credit for time spent on leave of absence and resumption of payments to fund upon return to service.

(a)(1) Any member of the fund who is in good standing with the fund, who leaves work as a firefighter or volunteer firefighter, and who elects to leave in the fund during such leave from work as a firefighter or voluntary firefighter the dues which the member has theretofore paid, shall, upon application to the board, be entitled to obtain a leave of absence from the fund for a period of not more than two years. Upon application prior to the expiration of any leave of absence or extended leave of absence, such a member shall be entitled to an extension of such leave of absence for a period of not greater than two years. If a member who leaves work as a firefighter or volunteer firefighter fails to apply for and maintain in effect a leave of absence, the board may treat such failure as an election to withdraw from membership in the fund as provided in subsection (b) of this Code section and Code Section 47-7-105.

(2) A member of the fund who obtains a leave of absence under paragraph (1) of this subsection shall, upon application to the board, be entitled to reinstatement to active status in the fund; provided, however, that upon such application, the applicant meets the requirements set forth in Code Section 47-7-40 as a prerequisite to reinstated active membership. Such member shall be entitled to credit for service rendered before obtaining a leave of absence and after reinstatement but shall not be entitled to credit for any period during such leave of absence.

(b)(1) A member may at any time elect to withdraw from membership in the fund and upon such withdrawal shall be entitled to a refund of dues theretofore paid by such member as provided in Code Section 47-7-105. Any member who elects to withdraw from membership in the fund shall not thereafter be eligible for membership or benefits except upon reinstatement to active membership in accordance with this subsection. Any such member may make application to the board for reinstatement of membership. Upon making such application, the applicant must pay to the fund a reinstatement fee of \$100.00. Upon reinstatement, such member shall be entitled to credit for service rendered after reinstatement to active membership in the fund but not for service prior to the date of reinstatement. Any such applicant who fails to satisfy the requirements of reinstatement shall not be entitled to membership in the fund.

(2) An applicant for reinstatement of membership in the fund as provided in this subsection shall not be entitled to such reinstatement unless at the time of such application the applicant meets the requirements set forth in Code Section 47-7-40. (Ga. L. 1956, p. 368, § 5; Ga. L.

1968, p. 441, § 2; Ga. L. 1979, p. 364, § 1; Ga. L. 1989, p. 339, § 2; Ga. L. 1991, p. 755, § 5; Ga. L. 1993, p. 476, § 2; Ga. L. 1997, p. 1376, § 1; Ga. L. 2000, p. 1449, § 5.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, decisions under Ga. L. 1955, p. 339, § 5, as amended, and Ga. L. 1956, p. 368, § 5A, as amended, prior to revision by Ga. L. 1976, p. 241, § 4 and Ga. L. 1979, p. 364, § 1A, are included in the annotations for this Code section.

For discussion on reinstatement of previous service for Firemen's Pension Fund purposes in light of Ga. L. 1979, p. 364, § 1A, see 1980 Op. Att'y Gen. No. U80-41.

When board cannot award military service credit. — Board of trustees has no authority to award military service credit to member of fund employed by the State of Georgia or a political subdivision thereof. 1974 Op. Att'y Gen. No. U74-109 (rendered under Ga. L. 1955, p. 339, § 5, as amended).

Person returning must reapply for coverage within four months. — Person covered by the Firemen's Pension Fund who ceases to be a firefighter for a time and then returns to a fire department must reapply for coverage within four months after the firefighter's return if the firefighter wishes to be reinstated, and this applies even though the firefighter left the firefighter's contributions in the fund. 1973 Op. Att'y Gen. No. U73-47 (rendered under Ga. L. 1955, p. 339, § 5, as amended, and Ga. L. 1956, p. 368, § 5A, as amended).

Same limitations and restrictions applicable to re-entering member. — Member having left fire service and having withdrawn the member's contributions from the fund who subsequently again becomes a firefighter, in order to be reinstated as a member of the fund, must make an application for membership within four months from the date of becoming such firefighter; the legislature intended to apply the same limitations and restrictions to a withdrawn member who has left the fire service and subsequently reenters it as apply to a person becoming a firefighter for the first time; the

legislature did not intend to discriminate between them and allow the former an unlimited time to make an application merely by virtue of past membership. 1965-66 Op. Att'y Gen. No. 66-220 (rendered under Ga. L. 1955, p. 339, § 5, as amended, and Ga. L. 1956, p. 368, § 5A, as amended).

Member rejoins fund by repaying money withdrawn, plus dues. — Member may withdraw from the fund after becoming a member and while still continuing the member's employment as a firefighter or volunteer firefighter, and may subsequently, while still so employed, rejoin the fund by repaying the money withdrawn, together with interest at the rate of 6 percent per annum, plus the dues which the firefighter would have had to pay in the interim, together with interest on the amount of dues at 6 percent per annum. 1958-59 Op. Att'y Gen. p. 237 (rendered under Ga. L. 1955, p. 339, § 5, as amended, and Ga. L. 1956, p. 368, § 5A, as amended).

Firefighter who left the fire service and withdrew the firefighter's contributions, and who later reentered fire service, had the status of a new firefighter when the firefighter returned to the fire service, and, under Ga. L. 1956, p. 368, § 4 (see O.C.G.A. § 47-7-40), has four months to apply for membership in the fund; under subsection (c) of Ga. L. 1956, p. 368, § 5 (see O.C.G.A. § 47-7-41), in order to obtain credit for the firefighter's prior fire service, the firefighter must pay up the amount withdrawn from the fund, together with interest thereon at 6 percent per annum. 1958-59 Op. Att'y Gen. p. 237 (rendered under Ga. L. 1955, p. 339, § 5, as amended, and Ga. L. 1956, p. 368, § 5A, as amended).

During bona fide leave of absence member is not required to pay dues. 1960-61 Op. Att'y Gen. p. 325 (rendered under Ga. L. 1955, p. 339, § 5, as amended, and Ga. L. 1956, p. 368, § 5A, as amended).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 145.

47-7-42. Application for membership by firemen and volunteer firemen previously not members.

Reserved. Repealed by Ga. L. 1987, p. 1040, § 3.

47-7-43. Employees of the fund.

Notwithstanding any provision in this chapter to the contrary, each regular employee of the fund shall be eligible to join the fund for the purpose of receiving pension benefits only, in like manner as firefighters and volunteer firefighters. (Ga. L. 1971, p. 332, § 3; Ga. L. 1987, p. 1040, § 4; Ga. L. 1997, p. 1376, § 1.)

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.

ARTICLE 4

FINANCING THE FUND

47-7-60. Dues required of members; effect of failure to pay dues in timely manner.

(a) Each firefighter or volunteer firefighter accepted for membership in the fund shall pay to the fund the sum of \$15.00 for each month of service as a firefighter or volunteer firefighter in a fire department. Such monthly payments shall be due on or before the tenth day of each month of service.

(b)(1) Any member who becomes six months in arrears in making such payments shall be removed from membership in the fund and shall thereafter be ineligible for membership in or benefits under the fund, except as provided in this subsection and in subsection (c) of this Code section.

(2) Any member who has been removed from membership in the fund under paragraph (1) of this subsection may make application to the board for reinstatement of membership. As a condition of such reinstatement, the applicant must pay to the fund a reinstatement fee of \$100.00. Upon such reinstatement, such member shall be entitled to credit for service rendered after reinstatement. If such member has not withdrawn the dues he or she paid to the fund prior to the suspension, then he or she shall also be entitled to creditable service for service rendered prior to the suspension.

(3) An applicant for reinstatement of membership in the fund as provided in this subsection shall not be entitled to reinstatement unless at the time of such application the applicant meets the requirements set forth in Code Section 47-7-40 as a prerequisite to reinstatement to active membership.

(c) If a member who has attained the minimum service credits required for a normal retirement benefit under Code Section 47-7-100 is suspended from membership in the fund under this Code section and is not reinstated, then, provided that such member does not withdraw dues paid to the fund prior to his or her suspension, upon termination of service, such member shall be entitled to a normal retirement benefit payable under Code Section 47-7-100. The normal retirement benefit to which such member may thereafter become entitled upon termination of service shall be calculated as of the date of the member's suspension from the fund, using the service credits and age the member had attained on the date of suspension, which shall be deemed to be the youngest age at which early retirement benefits may commence or such greater age as the member has actually attained on that date, and the maximum monthly benefit in effect on such date of suspension. (Ga. L. 1955, p. 339, § 5; Ga. L. 1968, p. 441, § 1; Ga. L. 1976, p. 241, § 4; Ga. L. 1984, p. 990, § 3; Ga. L. 1991, p. 755, § 6; Ga. L. 1993, p. 476, § 3; Ga. L. 1997, p. 1376, § 1; Ga. L. 2000, p. 562, §§ 1, 2.)

47-7-61. Tax on premiums charged by fire insurance companies for certain classes of coverage; exclusions; penalty for failure to report and pay such tax.

(a)(1) Every fire insurance company, corporation, or association doing business within this state and writing fire, lightning, or extended coverage, inland marine or allied lines, or windstorm insurance policies covering risks located within this state shall on or before April 1 of each year file a return with and pay to the Georgia Firefighters' Pension Fund a tax of 1 percent of the amounts properly reported for the calendar year preceding the filing of such return on the Exhibit of Premiums and Losses of the Annual Statement form for property and casualty insurance companies adopted by the National Association of Insurance Commissioners as required by Title 33 or by the regulations of the Commissioner of Insurance with respect to business conducted within this state to be filed by such company, corporation, or association with the Commissioner of Insurance, as follows:

(A) One hundred percent of the gross direct premiums written for fire insurance coverage, less the exclusions permitted by paragraph (2) of this subsection, as required to be reported on line 1 of the Exhibit of Premiums and Losses;

(B) Fifty percent of the gross direct premiums written for allied lines insurance coverage, less the exclusions permitted by paragraph (2) of

this subsection, as required to be reported on line 2.1 of the Exhibit of Premiums and Losses;

(C) Sixty-five percent of the gross direct premiums written for homeowner's multiple peril coverage, less the exclusions permitted by paragraph (2) of this subsection, as required to be reported on line 4 of the Exhibit of Premiums and Losses;

(D) One hundred percent of the gross direct premiums written for commercial multiple peril coverage, less the exclusions permitted by paragraph (2) of this subsection, as required to be reported on line 5.1 of the Exhibit of Premiums and Losses;

(E) Thirty percent of the gross direct premiums written for inland marine insurance coverage, as required to be reported on line 9 of the Exhibit of Premiums and Losses;

(F) Twelve percent of the gross direct premiums written for private passenger automobile physical damage insurance coverage, as required to be reported on line 21.1 of the Exhibit of Premiums and Losses; and

(G) Twelve percent of the gross direct premiums written for commercial automobile physical damage insurance coverage, as required to be reported on line 21.2 of the Exhibit of Premiums and Losses.

(2) If property covered under any policy for which gross premiums are reported as required by paragraph (1) of this subsection is served by public fire suppression facilities which are rated less favorably than a class nine rating under standards set forth in the Fire Suppression Rating Schedule, Section I, Public Fire Suppression, Edition 6-80, Copyright 1980, published by the Insurance Services Office, a rating organization licensed by the Commissioner of Insurance, which schedule is maintained on file with the Commissioner of Insurance as required by general law and which has not been disapproved by the Commissioner, or less than a rating which the board by regulation determines is substantially equivalent under rating standards published by an organization licensed by the Commissioner of Insurance performing similar rating functions, which standards are maintained on file with the Commissioner of Insurance and which have not been disapproved by the Commissioner, then and to that extent the premiums under such policy shall be excluded in determining the tax imposed under this Code section. The amount of such exclusion shall be reported on the returns filed with the board.

(3) Returns shall be made on forms prescribed by the board. Such forms shall require, without limitation, a separate statement of the gross premiums from policies covering property served by public fire suppression facilities of the fire department rated as not less than class nine under the standards set forth in the Fire Suppression Rating Schedule or a rating which the board determines is its substantial equivalent.

(4) Taxes imposed by this Code section shall bear interest from the due date until paid at the rate of interest which judgments entered in the courts of this state bear as prescribed by law.

(5) The tax imposed by this Code section is in addition to any and all other premium taxes now imposed by law.

(6) If the Exhibit of Premiums and Losses of the Annual Statement form for property and casualty insurance companies adopted by the National Association of Insurance Commissioners required by Title 33 or by the regulations of the Commissioner of Insurance to be filed by such company, corporation, or association with the Commissioner of Insurance is changed, the board of trustees shall by regulation designate and set forth in the form of tax returns prescribed by the board the portions of the annual return required to be filed by such company, corporation, or association with the Commissioner of Insurance thereunder, which corresponds in content to the content required to report and calculate the tax imposed under paragraph (1) of this subsection.

(b) If a fire insurance company, corporation, or association knowingly or willfully fails to file a return or pay the taxes imposed by this Code section, the executive director shall report such delinquency to the Commissioner of Insurance. The Commissioner of Insurance is authorized and directed upon receipt of such report, after notice and hearing, immediately to cancel such delinquent's license to do business within this state.

(c) If any fire insurance company, corporation, or association knowingly or willfully fails to file a return or pay the taxes due as imposed by this Code section, there shall be imposed, in addition to the tax and interest thereon, a penalty not greater than 25 percent of the taxes due or \$1,000.00, whichever is greater, in the discretion of the board.

(d) The board may in its name bring such actions as it may determine appropriate to collect any liability imposed by this Code section.

(e)(1) A claim for the refund of any tax erroneously or illegally assessed and collected or paid, including any claim that the tax was imposed under a statute or an application of a statute which violates the Georgia Constitution or the Constitution of the United States, may be made by the taxpayer in writing filed with the board at any time within one year after the date on which the board received such tax. Such written claim shall include a detailed statement of the grounds upon which the taxpayer relies. Following the filing of such claim, the taxpayer shall provide to the board such additional information as the board in writing requires to evaluate the claim. The taxpayer's failure to provide any information so requested which is available to the taxpayer shall permit the board to deny the claim and shall bar any subsequent taxpayer suit for refund permitted by this Code section.

(2) A taxpayer whose timely claim for refund is denied or has not been decided by the board within 180 days after it is filed may bring an action

for a refund of not more than the amount set forth in the claim. Such action shall be brought in the superior court of the county in which the board's principal office is located. Such action shall name as the defendant the Georgia Firefighters' Pension Fund and not members of the board or any officer or employee of the board. Service of the summons and complaint in such action shall be made upon the executive director of the fund. No such action shall be commenced after the expiration of 180 days after the claim has been denied by the board or, if the board has not acted on the claim, within one year of the date the claim was filed with the board.

(3) No sum for which a refund is determined to be due shall bear interest until and only from the date the board has approved the claim or a final judgment for such amount has been entered. Such interest shall be calculated at the rate of 7 percent per annum.

(4) No taxpayer shall be authorized to obtain a refund or maintain any action or proceeding for refund and no court shall have jurisdiction to award any refund against the fund or the board or its members, officers, or employees except as provided in this subsection. (Ga. L. 1955, p. 339, § 6; Ga. L. 1987, p. 1040, § 5; Ga. L. 1992, p. 1298, § 1; Ga. L. 1994, p. 703, § 3; Ga. L. 1997, p. 947, § 1; Ga. L. 1997, p. 1376, § 1; Ga. L. 1998, p. 126, § 1; Ga. L. 2000, p. 562, §§ 3, 4; Ga. L. 2002, p. 590, § 1; Ga. L. 2005, p. 54, § 2/HB 355; Ga. L. 2006, p. 120, § 3/HB 749; Ga. L. 2010, p. 438, §§ 3, 4/HB 1150.)

The 2010 amendment, effective July 1, 2010, substituted "not less than class nine" for "class nine and those rated not less than class eight" near the end of the second sentence of paragraph (a)(3) and substituted "executive director" for "secretary-treasurer" near the end of the fourth sentence of paragraph (e)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, the word "windstorm" was substituted for "wind storm" in the first sentence of paragraph (a)(1).

OPINIONS OF THE ATTORNEY GENERAL

Premium tax levied whether insurer designated fire insurance company. — One percent premium tax is levied upon any insurer writing fire, lightning, and extended coverage; inland marine and allied lines; and windstorm insurance on property within

the State of Georgia which does not fall within the exception set out in this statute, regardless of whether or not the insurer is designated as a fire insurance company, corporation, or association. 1960-61 Op. Att'y Gen. p. 267 (see O.C.G.A. § 47-7-61).

ARTICLE 5

SERVICE CREDITABLE TOWARD RETIREMENT

47-7-80. Transfer of service credits from one fire department to another.

A firefighter's or volunteer firefighter's length of service may be transferable from one fire department to another by furnishing the board with a proper certificate. (Ga. L. 1955, p. 339, § 11; Ga. L. 1997, p. 1376, § 1; Ga. L. 2000, p. 131, § 1.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 311 et seq.

47-7-81. Effect of failure of volunteer fire department to hold required drills; effect of volunteer firefighter's failure to meet attendance requirements.

(a)(1) The board is authorized to prescribe the minimum monthly and annual number of hours of drills and meetings required to be conducted by a volunteer fire department as a condition to qualification of service by a firefighter or volunteer firefighter with such department for credit toward retirement and other benefits under this chapter.

(2) Any volunteer fire department which fails to hold at least eight hours of drills and meetings per month for three months in any calendar year or such greater requirements as may be established by the board shall not be classified as a volunteer fire department for such calendar year, and the members of such department shall not be entitled to receive credit for service during such calendar year. Such members shall be entitled to a refund of 95 percent of the dues paid during such period.

(b)(1) The board is authorized to prescribe the monthly and annual percentage of attendance at drills, meetings, and fires necessary for volunteer firefighters to receive credit for service toward retirement and other benefits under this chapter and to establish the form of reports required to be filed with the board concerning such matters and the time within which such reports must be filed with the board. In no case shall the annual percentage be set by the board at less than 50 percent of all drills, meetings, and fires in any calendar year.

(2) Any volunteer firefighter who fails to meet the attendance requirements relative to drills, meetings, and fires in this Code section, or such greater requirement as may be established by the board for the calendar

year shall not be granted credit for such year's service; and, in the event the member has paid any dues into the fund for such period, the member shall be entitled to a refund of 95 percent of such dues so paid.

(c) The board is authorized to prescribe the monthly and annual hourly requirements in conjunction with the Georgia Firefighter Standards and Training Council necessary to receive credit for service toward retirement and other benefits under this chapter and to establish the form of reports required to be filed with the board concerning such matters and the time within which such reports must be filed with the board. In no case shall the average weekly hourly requirement be less than 20 hours per week for any calendar year. (Ga. L. 1956, p. 368, § 2; Ga. L. 1991, p. 755, § 7; Ga. L. 1997, p. 1376, § 1; Ga. L. 2006, p. 122, § 6/HB 344.)

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 542 et seq.

47-7-82. Fire department employees other than firefighters or volunteer firefighters.

(a) No person otherwise properly admitted to the fund shall be excluded from continuing membership therein solely because the member's employment by or service with a fire department is not in the capacity of a firefighter or volunteer firefighter, but no credit shall be given for service rendered in any month by any member of the fund unless such service is rendered as a firefighter or volunteer firefighter and no benefits payable by the terms of this chapter to a firefighter or volunteer firefighter shall be payable to any member unless such member is serving as a firefighter or volunteer firefighter at the time such benefits are earned or become payable, except as otherwise provided in Code Section 47-7-43. For any period during which any member provides service which is not creditable, the member shall be deemed to be on leave of absence from the fund.

(b) Notwithstanding the provisions of subsection (a) of this Code section, a member may continue membership and may continue to earn credit for service rendered following the member's appointment to an administrative position with a state, county, or municipal public safety unit, provided that a significant responsibility of such administrative position involves direct administrative oversight of the operation of a fire department under the jurisdiction of such public safety unit; and provided, further, that at the time of such appointment the member has acquired by service as a firefighter not less than 15 years of creditable service in the fund. As used in this subsection, the term "direct administrative oversight" means responsibility in a position having authority over the chief of a fire department for budget, personnel, operations, or purchasing functions relating to the fire-fighting functions of the fire department. Any member

who was appointed to such an administrative position prior to July 1, 1992, shall receive credit for service rendered from the date of such appointment if such member pays all dues owing for such period, and the provisions of subsection (b) of Code Section 47-7-60 shall not apply to such period. (Code 1981, § 47-7-82, enacted by Ga. L. 1983, p. 1310, § 2; Ga. L. 1991, p. 755, § 8; Ga. L. 1992, p. 2525, § 1; Ga. L. 1997, p. 1376, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.

47-7-83. Service credit of member who is also member of Peace Officers' Annuity and Benefit Fund.

No credit shall be given for service rendered after April 1, 1989, by a member who is also a member of the Peace Officers' Annuity and Benefit Fund if such service is creditable under the Peace Officers' Annuity and Benefit Fund to which such member belongs. (Code 1981, § 47-7-83, enacted by Ga. L. 1989, p. 339, § 3; Ga. L. 1993, p. 476, § 4; Ga. L. 1996, p. 264, § 1; Ga. L. 2010, p. 1207, § 54/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted the subsection (a) designation and deleted former subsection (b), which read: “(b)(1) Any member who first became a member of the fund on or after July 1, 1993, and who is also a member of the Peace Officers' Annuity and Benefit Fund shall not be eligible for creditable service in the fund for any period after that date with respect to which such member is also entitled to any creditable service in the Peace Officers' Annuity and Benefit Fund.

“(2) Any person who was a member of the fund on July 1, 1993, and who subsequent to that date was placed on a leave of absence from the fund by action of the board of trustees and who from that date to July 1, 1996, was continuously employed as a firefighter or who was continuously enrolled as a volunteer firefighter may, upon again becoming a regular, active member of the fund, obtain creditable service for 36 months of service by paying the regular dues which would have been made for each month of service if such leave of absence had not been imposed, provided that such member otherwise satisfied the require-

ments for creditable service during such period. Such payment must be made to the board of trustees not later than December 31, 1996.”

Editor's notes. — Former Code Section 47-7-83, concerning credit for prior service, was based on Ga. L. 1984, p. 990, § 4 and was repealed by Ga. L. 1987, p. 1040, § 6 effective April 14, 1987.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-7-84. Credit for prior eligible service by persons who are members as of September 1, 1992, or who applied for membership on or before that date.

(a) As used in this Code section, the term “prior eligible service” means service:

- (1) Rendered by a member of the fund as a firefighter or volunteer firefighter;
- (2) Rendered without interruption prior to the date such member becomes a member of the fund;
- (3) Rendered after the member reached the age of 30 years; and
- (4) For which the member would otherwise have been eligible for credit if such member had been a member of the fund at the time such service was rendered;

provided, however, that such term shall not include a period of more than ten years of such service.

(b) Any person who is a member of the fund on September 1, 1992, or who applies for membership on or before September 1, 1992, and is thereafter accepted for membership shall be entitled to credit for prior eligible service, provided that such person satisfies the following requirements:

(1) The member or applicant for membership files with the board on or before September 1, 1992, an application for such credit in the form prescribed by the board;

(2) At the time of application for credit, the member or applicant for membership pays to the fund for each month of prior eligible service credit sought an amount equal to the contributions that would have been made had the member or applicant been a member and entitled to credit during the period of prior eligible service, at the monthly contribution rate in effect at the time the application for credit is made, together with interest on such monthly amount from the date on which such contribution would have been made until the date of application for credit at a rate rounded to the nearest one-fourth of 1 percent which is equal to two and one-half percentage points plus the monthly index, expressed in terms of percentage interest per annum, of the monthly average of the daily yields on all outstanding United States Treasury Bonds issued, except such bonds as are redeemable at par for payment of federal estate taxes, with 30 years remaining to final maturity as compiled by the United States Treasury Department and as published by the Board of Governors of the Federal Reserve System in the monthly *Federal Reserve Bulletin* for the month of July, 1992, but not in any event less than 8 percent per annum; and

(3) At the time of application for credit, the member or applicant for membership is at least 35 years of age but not greater than 45 years of age.

(c) Nothing in this Code section shall alter the requirements for membership in the fund or the limitations on membership or benefits of membership which would otherwise apply absent the benefit of prior eligible service credits under this Code section. (Code 1981, § 47-7-84, enacted by Ga. L. 1992, p. 2358, § 1; Ga. L. 1997, p. 1376, § 1.)

47-7-85. Credit for prior eligible service by persons who are members as of July 1, 1998, or become members after that date.

(a) As used in this Code section, the term “prior eligible service” means service:

(1) Rendered by a member of the fund as a fireman or volunteer fireman; and

(2) For which the member would otherwise have been eligible for credit if such member had been a member of the fund at the time such service was rendered.

(b) Any person who is a member of the fund on July 1, 1998, or who becomes a member after that date shall be entitled to credit for up to ten years of prior eligible service, provided that such person satisfies the following requirements:

(1) The member or applicant for membership files with the board an application for such credit in the form prescribed by the board; and

(2) At the time of application for credit, the member or applicant for membership pays to the fund an amount sufficient to grant the creditable service authorized by this Code section without creating any actuarially determined accrued liability, as a result of granting such creditable service, against the fund, such determination to be made by the board after consultation with an actuary retained by the board.

(c) Nothing in this Code section shall alter the requirements for membership in the fund or the limitations on membership or benefits of membership which would otherwise apply absent the benefit of prior eligible service credits under this Code section. (Code 1981, § 47-7-85, enacted by Ga. L. 1998, p. 148, § 1.)

47-7-86. Creditable service for other pension fund participation for members of Georgia Class Nine Fire Department Pension Fund.

Reserved. Repealed by Ga. L. 2006, p. 120, § 42/HB 749, effective July 1, 2006.

Editor's notes. — This Code section was based on Code 1981, § 47-7-86, enacted by Ga. L. 2000, p. 562, § 5.

47-7-87. “Prior eligible service” defined; requirements.

(a) As used in this Code section, the term “prior eligible service” means service:

(1) Rendered by a member of the fund as a firefighter or volunteer firefighter;

(2) Rendered without interruption prior to the date such member became a member of the fund; and

(3) For which the member would otherwise have been eligible for credit if such member had been a member of the fund at the time such service was rendered;

provided, however, that such term shall not include a period of more than five years of such service.

(b) Any person who is a member of the fund on July 1, 2000, and who is at least 53 years old on that date shall be entitled to credit for prior eligible service, provided that such person satisfies the following requirements:

(1) The member or applicant for membership files with the board on or before September 1, 2000, an application for such credit in the form prescribed by the board; and

(2) At the time of application for credit, the member or applicant for membership pays to the fund for each month of prior eligible service credit sought an amount equal to the contributions that would have been made had the member or applicant been a member and entitled to credit during the period of prior eligible service, at the monthly contribution rate in effect at the time the application for credit is made, together with interest on such monthly amount from the date on which such contribution would have been made until the date of application for credit at a rate of 12 percent per year.

(c) Nothing in this Code section shall alter the requirements for membership in the fund or the limitations on membership or benefits of membership which would otherwise apply absent the benefit of prior eligible service credits under this Code section. (Code 1981, § 47-7-87, enacted by Ga. L. 2000, p. 1507, § 1.)

Code Commission notes. — Pursuant to § 1, was redesignated as Code Section 47-7-87. Code Section 28-9-5, in 2000, Code Section 47-7-86, as enacted by Ga. L. 2000, p. 1507,

OPINIONS OF THE ATTORNEY GENERAL

Eligibility for pension credit. — Person who served as firefighter and was a member of the Firefighters' Pension Fund from 1971 through 1984 and then resumed service as a firefighter and applied for reinstatement in

the fund in 1992 is not eligible to receive pension credit for years as a firefighter prior to that person's break in service. 2001 Op. Att'y Gen. No. U01-1.

47-7-88. Impact of active duty military service upon receipt of creditable service time.

(a) The provisions of this Code section apply solely to any member of the fund who left active employment as a firefighter as a result of being called to active duty as a member of the Army or Air Force National Guard or the Army, Air Force, Navy, or Marine Corps Reserve and who returned to employment as a firefighter upon being released from such active duty.

(b) Any member of the fund shall be entitled to receive creditable service for a period of break in service due to being called to active military duty. To receive such creditable service, a member must make application to the board and pay the normal monthly dues for each month of such period of break in service not later than one year following the member's release from active duty and return to employment. (Code 1981, § 47-7-88, enacted by Ga. L. 2006, p. 426, § 1/HB 660.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

47-7-89. Calculating creditable service time.

The board is authorized to calculate creditable service on a monthly basis, expressed as a fraction of a year, for periods of time less than a year. (Code 1981, § 47-7-89, enacted by Ga. L. 2006, p. 426, § 1/HB 660.)

ARTICLE 6

RETIREMENT, RETIREMENT ALLOWANCES, DISABILITY BENEFITS,
AND DEATH BENEFITS

47-7-100. Eligibility for full pension benefits; eligibility for partial benefits; optional pension benefits; vesting of rights to pension benefits; early retirement provisions.

(a) As used in this Code section, the term:

(1) "Selected beneficiary" means any person designated from time to time before or after the approval of an application for retirement by the member in writing on forms prescribed by the board to receive benefits which continue to be payable upon the death of the member.

(2) "Spouse" means the husband or wife to whom the member is validly married under the laws of this state at the time of the approval by the board of an application for retirement or at the time of the approval of a later exercise by such member of an option granted by this Code section and who holds such status at the time benefits became payable to such person on account of the death of a member.

(b)(1) Any eligible member who has attained the age of 55 years and who terminates service as a firefighter or volunteer firefighter after at least 25 years of service, upon application to and approval by the board, shall have a vested right in an amount equal to the maximum monthly retirement benefit in effect on the date the board approves such application. Such benefits shall commence on the date of the member's termination of service.

(2) Any eligible member who terminates service as a firefighter or volunteer firefighter after 25 years of service, but before reaching the age of 55 years, may, upon filing an application with the board, cease payment of such member's monthly dues following such termination of service and, upon reaching the age of 55 years and being otherwise eligible, shall be paid a monthly benefit equal to the maximum monthly retirement benefit in effect on the date such member attains the age of 55 years.

(c) Any eligible member who terminates service as a firefighter or volunteer firefighter after at least 15 years of service, upon application to and approval by the board, shall have a vested right in and to a monthly benefit payable for the member's lifetime equal to a pro rata amount of the maximum monthly retirement benefit provided in subsection (b) of this Code section in effect on the date of such termination of service, which amount shall be determined by the ratio of years served, being not less than 15 nor more than 25, to the full 25 year service retirement. Such benefits shall become payable when the member reaches 55 years of age or when he or she terminates employment as a firefighter or volunteer firefighter, whichever is later.

(d) At any time prior to approval by the board of an application for retirement, a member may elect or may revoke a previous election and make a new election to have monthly benefits payable under one of the options set forth in this subsection, in lieu of the benefits payable under subsection (b) or (c) of this Code section. The benefits shall be paid in accordance with the terms of the option elected. Election of any option shall be made by the member on forms provided by the board and shall be subject to approval by the board, which approval shall not be unreasonably withheld. No optional election is available for payment of disability benefits.

(1) Option A, the joint and survivor option, shall consist of a decreased retirement benefit which shall be payable during the joint lifetime of both the member and the member's spouse and which shall

continue after the death of the member during the lifetime of the spouse in the amount chosen by the member, which amount shall be 100 percent, 75 percent, 66 2/3 percent, or 50 percent of the member's benefits. Any member who has completed 15 years of creditable service may elect that, in the event of the member's death prior to receiving any retirement benefits under this chapter, the member's spouse shall receive decreased retirement benefits in the amount elected by the member, which amount shall be 100 percent, 75 percent, 66 2/3 percent, or 50 percent of the benefits to which the member would have been entitled based upon the member's creditable service as of the time of the member's death. The decreased retirement benefits payable to the spouse of a member who dies prior to receiving any retirement benefits under this chapter shall commence on the date the member would have become 55 years of age and shall not be payable unless, prior to the member's death, the member had elected such benefits in the form and manner prescribed by the board and had filed such election with the board.

(2) Option B, the ten years' certain and life option, shall consist of a decreased retirement benefit payable to the member during the member's lifetime; and, in the event of the member's death within ten years after the member's retirement, the same monthly benefits shall be payable to the member's selected beneficiary for the balance of such ten-year period.

(3) If a member selects Option A, then, after the approval of the application for retirement, the following provisions apply:

(A) If the member's spouse shall predecease the member, the member may, in writing on forms prescribed by the board and subject to approval by the board, revoke Option A and thereafter receive during the member's lifetime a monthly retirement benefit commencing on the date on which the board approves such revocation, but not for any period prior to such approval, equal to the maximum monthly benefit which would have been payable to him had such option not been exercised;

(B) If there is entered a final judgment of complete divorce between the member and the member's spouse, the member may, in writing on forms prescribed by the board and subject to approval by the board, revoke Option A and thereafter receive during the member's lifetime a monthly retirement benefit commencing on the date on which the board approves such revocation, but not for any period prior to such approval, equal to the maximum monthly benefit which would have been payable had such option not been exercised; and

(C) If, following the death of the member's spouse or the entry of a final judgment of divorce between the member and the member's

spouse, the member remarries, the member may, in writing on forms prescribed by the board and subject to approval by the board, elect Option A with respect to the member's new spouse. The joint and survivor benefit shall be determined as of the date of the election.

(4) The amount of any optional retirement benefit set forth in this subsection shall be the actuarial equivalent of the amount of the benefit that would otherwise be payable to the member under subsection (b) or (c) of this Code section based upon the interest rate and mortality basis approved from time to time by the board, the age of the member, and, if applicable, the age of his spouse as of the date benefits are to commence or as of the date benefits would have commenced if the member had retired after first becoming eligible for full benefits, whichever is earlier, but the optional benefits available under Option A shall be calculated without regard to the provisions of paragraph (3) of this subsection.

(e)(1) Any eligible member who retires after July 1, 1984, shall be entitled to an increase in the maximum monthly retirement benefit in effect at the time of his or her retirement under this Code section equal to 1 percent of the monthly retirement benefit for which the member would have been otherwise eligible for each full year of creditable service while a member of the fund as a firefighter or volunteer firefighter in excess of 25 years of creditable service.

(2) Any eligible member who retires after July 1, 2002, shall be entitled to an increase in the maximum monthly retirement benefit in effect at the time of his or her retirement under this Code section equal to 2 percent of the monthly retirement benefit for which the member would have been otherwise eligible for each full year of creditable service while a member of the fund as a firefighter or volunteer firefighter in excess of 25 years of creditable service. Such increase shall be the total increase allowed by this subsection.

(f) Any eligible member who would be entitled to the commencement of retirement benefits upon reaching age 55 under subsection (b) or (c) of this Code section may elect to retire after reaching the age of 50 but before reaching the age of 55 and immediately commence the drawing of retirement benefits and in that event the member shall be eligible immediately upon retirement for a reduced monthly pension benefit in an amount determined by multiplying the benefit for which the member would have been otherwise entitled under subsections (b), (c), and (e) of this Code section had the member delayed retirement or the commencement of benefits until the member reached age 55, such benefit to be determined as of the date of the member's actual retirement or first receipt of the monthly retirement benefit by the factor set forth below:

If the Member's Age At Retirement (determined by the member's age at the member's immediately preceding birthday) Is:	The Early Retirement Factor Is:
50	.70
51	.76
52	.82
53	.88
54	.94

The option available under this subsection may also be exercised by a surviving spouse who is the beneficiary of an Option A election with respect to the benefits payable to the spouse in the event the member dies prior to receiving any benefits and would have been able to exercise the option available under this subsection.

(g)(1) Effective July 1, 1988, the maximum monthly retirement benefit for any person who retires on or after that date shall be \$500.00.

(2) Effective July 1, 1988, the maximum monthly retirement benefit which was payable under this Code section immediately prior to that date shall be increased in the amount of \$85.00 per month, and the monthly retirement benefit of each person who retired under this chapter prior to that date or the monthly benefit of any surviving spouse or selected beneficiary who was receiving a benefit prior to that date shall be increased by a percentage of \$85.00 which is equal to the percentage that the retired person's, surviving spouse's, or selected beneficiary's monthly benefit payable immediately prior to July 1, 1988, bore to the maximum monthly benefit payable under this Code section immediately prior to July 1, 1988.

(3) Effective July 1, 1990, the monthly retirement benefit for any person who retires on or after that date under this Code section shall be \$570.00.

(4) Effective July 1, 1990, the maximum monthly retirement benefit which would otherwise be payable to persons retired under this Code section prior to July 1, 1990, shall be increased by the amount of \$40.00 per month, and the monthly retirement benefit of each person who retired under this chapter prior to that date or the monthly benefit of any surviving spouse or selected beneficiary who was receiving a benefit prior to that date shall be increased by a percentage of \$40.00 which is equal to the percentage that the retired person's, surviving spouse's, or selected beneficiary's monthly benefit payable immediately prior to July 1, 1990, bore to the maximum monthly benefit otherwise payable to such person under this Code section prior to July 1, 1990.

(5) Effective July 1, 2000, the monthly benefit for any member who retired on or before February 25, 1976, under subsection (b) of this Code

section shall be no less than \$500.00. The monthly benefit of any member retiring on or before such date under a retirement option providing for less than a full service pension, or the beneficiary of any such member, shall be calculated on an amount not less than \$500.00.

(h)(1) If any member who has not elected an option under subsection (d) of this Code section dies after accruing at least 15 years of creditable service but before applying for retirement as provided in this Code section, and such member is survived by a spouse, the surviving spouse shall be entitled to receive a benefit as if the member had elected to receive 100 percent of the member's benefits under Option A as provided in paragraph (1) of subsection (d) of this Code section. Such benefits shall commence on the date the deceased member would have reached the age of 55 years or, at the option of the surviving spouse, on the date the deceased member would have reached the age of 50 years in accordance with the provisions of subsection (f) of this Code section.

(2) If any member who has not elected an option under subsection (d) of this Code section dies after accruing at least 15 years of creditable service but before applying for retirement as provided in this Code section, and such member is not survived by a spouse, the selected beneficiary shall be entitled to receive a benefit as if the member had elected to receive Option B as provided in paragraph (2) of subsection (d) of this Code section.

(3) If any member who has elected an option under subsection (d) of this Code section dies after accruing at least 15 years of creditable service but before applying for retirement as provided for in this Code section, the benefits shall be paid in accordance with the option so elected. (Ga. L. 1955, p. 339, § 7; Ga. L. 1957, p. 323, § 1; Ga. L. 1960, p. 991, § 1; Ga. L. 1966, p. 242, § 1; Ga. L. 1968, p. 441, § 4; Ga. L. 1970, p. 334, § 1; Ga. L. 1971, p. 332, § 1; Ga. L. 1973, p. 186, § 1; Ga. L. 1976, p. 235, § 1; Ga. L. 1979, p. 364, §§ 2, 3; Ga. L. 1981, p. 608, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1984, p. 990, § 5; Ga. L. 1988, p. 338, § 1; Ga. L. 1990, p. 554, § 1; Ga. L. 1991, p. 130, § 1; Ga. L. 1991, p. 755, § 9; Ga. L. 1992, p. 3010, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 1994, p. 703, § 4; Ga. L. 1997, p. 1376, § 1; Ga. L. 1998, p. 149, § 1; Ga. L. 2000, p. 562, §§ 6, 7; Ga. L. 2002, p. 590, § 2; Ga. L. 2010, p. 438, § 5/HB 1150.)

The 2010 amendment, effective July 1, 2010, deleted the former last sentence of subparagraph (d)(3)(C) which read: "No such election shall be made until the expi-

ration of one year after the date of remarriage or until a child of the married couple is born, whichever is earlier."

OPINIONS OF THE ATTORNEY GENERAL

Retirees entitled to benefits at time applications approved. — Members of the fund who have attained the requisite age and

creditable service for retirement are entitled to be paid the monthly benefits provided by law at the time their retirement applications

are approved by the board of trustees; these firefighters should be paid monthly benefits beginning at the time of the approval of the firefighters' applications. 1976 Op. Att'y Gen. No. U76-65.

Volunteer firefighters receive no credit for over 50 percent unexcused absences. — Volunteer firefighters may not receive credit under the fund for calendar years of service in which the firefighters did not attend 75 percent (now 50 percent) of all drills, meetings, and fires; however, the board of trustees is authorized and empowered to excuse volunteer firefighters from the required attendance percentage at drills, meetings, and fires of their respective departments so long as the attendance is prevented by causes beyond the control of the volunteer firefighters. 1974 Op. Att'y Gen. No. U74-8.

Retiring firefighters returning to work cannot continue to draw pension. — Firefighter may not retire and draw pension benefits and then go back to work with a fire department and continue to draw the firefighter's pension. 1975 Op. Att'y Gen. No. U75-31.

Prior retirement time not counted as service toward later retirement. — When a member of the fund is on disability retirement and the board of trustees has the member reexamined for the member's disability and finds that the member is physically able to return to the fire service, the time spent in disability retirement does not count as service time toward a later service retirement. 1975 Op. Att'y Gen. No. U75-31.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, § 316 et seq. 81A C.J.S., States, § 247.

ALR. — Re-employment or reinstatement of public officer or employee as restoration of original status as regards incidental rights or privileges, 89 ALR 684.

Disciplinary suspension of public em-

ployee as affecting computation of length of service for retirement or pension purposes, 6 ALR2d 506.

Validity and effect of retroactive change in rate of employee's contribution to public pension fund, 78 ALR2d 1197.

Effect of divorce, remarriage, or annulment, on widow's pension or bonus rights or social security benefits, 85 ALR2d 242.

47-7-101. Eligibility for retirement benefits; withdrawal of application for benefits before approval; reemployment.

(a) Any member who applies for retirement benefits may withdraw such application at any time prior to its approval by the board.

(b) Any person who again becomes a paid employee of a fire department or of a volunteer fire department after having been placed on retirement or disability under Code Section 47-7-100 or 47-7-102 shall immediately notify the executive director of such reemployment. Retirement benefits being paid to such person shall be suspended as of the date of such reemployment and shall remain suspended until such reemployment terminates at which time the payment of retirement benefits shall be resumed in the amount to which the person was eligible at the time of reemployment. Disability benefits being paid to any such person shall be terminated as of the date of such reemployment. Within six months of the commencement of reemployment, any such person who at the time of application otherwise meets the requirements for membership may, by application in the manner provided by this chapter, become a member of the fund. In the event the application is granted, such member, upon meeting the requirements

provided by law, shall be entitled to all benefits provided for in Code Section 47-7-100, but the amount of monthly retirement or disability benefits payable to such member shall not exceed the amount of the monthly benefit which would be payable to such member had such subsequent retirement become effective at the time of the member's prior retirement, unless after such reemployment the member shall have acquired not less than seven years' creditable service as a member of the fund.

(c) A member who is eligible to receive a benefit under Code Section 47-7-100 shall not be entitled to benefits under Code Section 47-7-102. (Ga. L. 1960, p. 991, § 3; Ga. L. 1976, p. 241, § 6; Ga. L. 1983, p. 1310, § 3; Ga. L. 1991, p. 755, § 10; Ga. L. 1993, p. 476, § 5; Ga. L. 2005, p. 54, § 3/HB 355.)

OPINIONS OF THE ATTORNEY GENERAL

Entitled to benefits provided by law when applications approved. — Members of the fund who have attained the requisite age and creditable service for retirement are entitled to be paid the monthly benefits provided by law at the time their retirement applications

are approved by the board of trustees; these firefighters should be paid monthly benefits beginning at the time of the approval of the firefighters' applications. 1976 Op. Att'y Gen. No. U76-65.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, § 316 et seq.

47-7-102. Eligibility for disability benefits; notice of injury; application for benefits; periodic medical examinations; termination of benefits; action contesting determination of board.

(a) Any firefighter or volunteer firefighter who, while a dues-paying member of this fund, is rendered totally and permanently physically disabled by injuries suffered while performing the duties of the position to which he was regularly assigned, so as to be unable physically to perform substantially all of the duties of that position to which he was regularly assigned when the disability originated and who, as a result of such physical disability, is separated from his work as a firefighter or his appointment as a volunteer firefighter shall be entitled to the maximum monthly disability benefit in effect on the date of the filing of his application for such benefit until his disability ceases or until the happening of one or more of the events set forth in subsection (f) of this Code section, provided that such firefighter or volunteer firefighter:

(1) Gives notice to the board within 12 months of the date on which such injuries are suffered on such form as the board may prescribe that he has suffered physical injuries on which a disability application may be filed; and

(2) Makes application to the board for such benefit within 12 months of the date on which he is separated from his employment as a firefighter or his appointment as a volunteer firefighter as a result of such total and permanent disability.

Such benefit shall be payable from the beginning of the seventh calendar month after the date of such separation or the date of application, whichever is later.

(b) Any firefighter who, while a dues-paying member of this fund, is rendered, by heart disease or respiratory disease, totally and permanently disabled so as to be unable to perform substantially all of the duties of the position to which he was regularly assigned and who, as a result of such disability, is separated from his work as a firefighter shall be entitled to the maximum monthly disability benefit in effect on the date of the filing of his application for such benefit until his disability ceases or until the happening of one or more of the events set forth in subsection (f) of this Code section, provided that:

(1) Such firefighter makes application to the board for such benefit within 12 months of the date on which he is separated from his employment as a firefighter as a result of such total and permanent disability; and

(2) Such firefighter shall have been a member in good standing of the fund for five consecutive years immediately prior to his application for disability.

Such benefit shall be payable from the beginning of the seventh calendar month after the date of disability or the date of application, whichever is later.

(c) Any volunteer firefighter shall be eligible for the disability benefit afforded firefighters under subsection (b) of this Code section upon separation from his appointment as a volunteer firefighter on account of such disability, in the same manner and upon the same conditions such benefits would be available to a firefighter, provided that, in addition, such volunteer firefighter:

(1) Has lawfully become a member of the fund and has been a member in good standing for ten consecutive years immediately prior to his application for a disability benefit; and

(2) Has at least 15 years of creditable service as a firefighter or volunteer firefighter.

(d) No benefit shall be payable under this Code section for any disability which results from or is attributable to:

(1) Chronic and excessive consumption of alcoholic beverages;

(2) Addiction to drugs, the use of which drugs is prohibited in this state by law;

(3) Engagement by the member in any criminal act;

(4) Mental, emotional, or psychological illness or condition;

(5) Injury sustained by the member while serving on active duty in the armed forces or while on active duty in the National Guard or other armed forces reserve unit; or

(6) An illness, disease, or physical injury or abnormality existing or suffered prior to current membership in the fund or the aggravation of such preexisting illness, disease, or physical injury or abnormality.

(e) Once each year during the first five years following the commencement of a disability benefit under this Code section and once in every three-year period thereafter, the board may require a disability beneficiary to undergo a medical examination, such examination to be made at his place of residence or other place mutually agreed upon, by a physician or physicians designated by the board. Such disability benefit recipient himself may request such an examination. The designated physician or physicians shall report to the board, following each examination, the current status and condition of the benefit recipient's disability.

(f) A disabled member's disability benefit shall cease:

(1) If he returns to service with a fire department in this state or any municipality or other political subdivision thereof;

(2) If he refuses to submit to any medical examination required under this Code section; and the benefit shall remain discontinued until the member's withdrawal of such refusal and submission to the requested medical examination, provided that if his refusal continues for one year, all his rights in and to any disability benefit may be revoked by the board;

(3)(A) If, within the first 24 months after the commencement of disability benefits under this Code section, the member does in fact obtain gainful employment in any occupation compensating him, in the case of a firefighter, at 75 percent or more of the compensation for the position he occupied payable at the time of the member's separation from employment because of such disability but increased at the simple rate of 3 percent per annum during the period of such disability or, in the case of a volunteer firefighter, at the rate of \$10,000.00 per annum, increased by the simple rate of 3 percent per annum from January 1, 1991.

(B) If, following 24 months after the commencement of disability benefits under this Code section, the board determines that the member either:

(i) Earns in fact in any occupation or, based upon any medical examination, is able to earn in any occupation, in the case of a firefighter, at least one-half of the annual compensation the member was receiving as a firefighter immediately prior to separation from employment or position on account of such disability, increased by the simple rate of 3 percent per annum of the date of separation or, in the case of a volunteer firefighter, the sum of \$7,500.00 per annum, increased by the simple rate of 3 percent per annum commencing January 1, 1991; or

(ii) In fact, performs in any occupation or, based upon any medical examination, is able to perform in any occupation substantially all of the duties of any occupation on at least a one-half time basis;

(4) If the board determines, on the basis of any medical examination, that the member has sufficiently recovered from his disability so as again to be able to perform substantially the duties of the position to which he was last regularly assigned prior to the time of separation on account of disability so as to be able to engage in any occupation or gainful employment for which he is reasonably suited by virtue of his background, training, education, and experience; or

(5) When he dies.

(g) The board shall prescribe and furnish a form and procedure for the application for a disability benefit. Upon receipt of an application the board may pass upon and decide whether to grant or deny the application on the basis of the submitted information. The board may also request that additional physicians' reports be submitted by the applicant or may request that the applicant for a disability benefit appear personally before the board. Receipt by the applicant of a disability benefit or payments under the federal Social Security Act or any local pension Acts may be considered by the board as evidence of eligibility for a disability benefit under this Code section.

(h) Notwithstanding the provisions of subsection (b) of Code Section 47-7-124, no action shall be brought or pending action maintained contesting any determination of the board with respect to any matter under this Code section or any predecessor statute unless such action is or had been initiated within one year after the determination of the board.

(i)(1) Except as otherwise provided in paragraph (3) of this subsection, effective April 1, 1989, the maximum monthly disability benefit for any person who had retired on disability on or after July 1, 1988, shall be \$335.00 per month commencing April 1, 1989.

(2) Except as otherwise provided in paragraph (3) of this subsection (i), effective April 1, 1989, the monthly disability benefit to which any

person who had retired before July 1, 1988, would be otherwise entitled shall be increased by the amount of \$120.00 per month commencing April 1, 1989.

(3) Effective on April 1, 1989, the monthly disability benefit to which any person who retired on disability before April 1, 1989, would be otherwise entitled shall be increased by \$120.00 per month commencing April 1, 1989, but such increase shall be paid only for the number of months between July 1, 1988, and April 1, 1989, during which such person received disability benefits after which the payments pursuant to this paragraph shall cease.

(j)(1) Effective July 1, 1990, the maximum monthly disability retirement benefit for any person who retires under this Code section on or after that date shall be \$375.00.

(2) Effective July 1, 1990, the maximum monthly retirement benefit which would otherwise be payable to persons retired under this Code section prior to July 1, 1990, shall be increased in the amount of \$40.00 per month.

(3) Effective July 1, 2000, the monthly benefit for any member who retires under this Code section shall be no less than \$500.00.

(k) Any other provision of this Code section to the contrary notwithstanding, no member who is an active member of the fund on July 1, 1993, and no member who becomes an active member of the fund or who again becomes an active member of the fund on or after July 1, 1993, shall be entitled to any benefits under this Code section; provided, however, that any person who is receiving benefits pursuant to the provisions of this Code section on such date shall continue to be eligible to receive such benefits under the terms and conditions provided in this Code section; provided, further, that any member who has timely given notice to the board or who has timely made application to the board for disability benefits in accordance with this Code section prior to July 1, 1993, shall, upon approval of the application for such benefits, continue to be eligible for such benefits pursuant to the provisions of this Code section. (Ga. L. 1957, p. 323, § 2; Ga. L. 1960, p. 991, § 4; Ga. L. 1961, p. 417, § 4; Ga. L. 1966, p. 242, § 2; Ga. L. 1968, p. 441, § 5; Ga. L. 1970, p. 334, § 2; Ga. L. 1971, p. 332, § 2; Ga. L. 1973, p. 186, § 2; Ga. L. 1976, p. 235, § 2; Ga. L. 1981, p. 608, § 2; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 1310, § 4; Ga. L. 1985, p. 209, § 1; Ga. L. 1989, p. 50, § 1; Ga. L. 1989, p. 339, § 4; Ga. L. 1990, p. 554, § 2; Ga. L. 1991, p. 130, § 1; Ga. L. 1993, p. 476, § 6; Ga. L. 1997, p. 1376, § 1; Ga. L. 2000, p. 562, § 8.)

Editor's notes. — Ga. L. 1989, p. 50, § 3, not codified by the General Assembly, provides: "Pursuant to the authority of Code Section 47-20-63 [repealed], this Act is not

subject to the requirements of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, known as the 'Public Retirement Systems Standards Law,' and pursuant to the

former provisions of said Code Section 47-20-63 the General Assembly finds and declares that:

“(1) It is necessary for this Act to become effective without delay in order to avoid hardship to members and retired members of the Georgia Firemen’s Pension Fund;

“(2) The Georgia Firemen’s Pension Fund is actuarially sound; and

“(3) That the changes in Chapter 7 of

Title 47 of the Official Code of Georgia Annotated providing for the Georgia Firemen’s Pension Fund which are accomplished by this Act will be fully financed by the Georgia Firemen’s Pension Fund without the necessity of any appropriation by the General Assembly and without adversely affecting the actuarial soundness of the Georgia Firemen’s Pension Fund.”

JUDICIAL DECISIONS

Standard of review applicable to a decision of the board of trustees of the Georgia Firemen’s Pension Fund is that the trial court must affirm the board decision unless the board acted arbitrarily, capriciously, and unreasonably. *Washington v. Georgia Firemen’s Pension Fund*, 211 Ga. App. 83, 438 S.E.2d 118 (1993).

Disability due to mental problems. — Trial

court did not abuse the court’s discretion in affirming denial of disability retirement benefits by the board of trustees pursuant to subsection (d)(4) of O.C.G.A. § 47-7-102 since the disability was partially caused by mental problems. *Washington v. Georgia Firemen’s Pension Fund*, 211 Ga. App. 83, 438 S.E.2d 118 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Section inapplicable to firefighter injured prior to section’s enactment. — Legislature did not intend in this statute to grant pensions to firefighters who had been injured prior to the enactment of this statute. The legislature, having fairly accurate information of the anticipated revenue, did not intend to saddle the retirement system with an unknown number of prospective claim cases that could ripen into disability pensions after the effective date of this statute; to place such a construction upon this statute might have the result of making the entire retirement system actuarially unsound. The legislature intended to make firefighters who are members of the fund eligible for disability payments when injured while performing official duties while members of the fund. 1957 Op. Att’y Gen. p. 228 (see O.C.G.A. § 47-7-102).

Total disability must result from injury sustained while member. — Total and permanent disability covered by this statute must result from bodily injury sustained while a member of the pension fund. 1958-59 Op. Att’y Gen. p. 236 (see O.C.G.A. § 47-7-102).

Benefits commence only after six-month waiting period. — Disability retirement benefits should commence being paid to a member of the fund retired for total and permanent disability only after the six-month “waiting” period under this statute has elapsed. 1975 Op. Att’y Gen. No. U75-31 (see O.C.G.A. § 47-7-102).

Benefits result from respiratory or heart disease. — Volunteer firefighters are eligible for disability retirement benefits resulting from respiratory or heart disease. 1975 Op. Att’y Gen. No. U75-31.

Preexisting condition may deny benefits. — Board may deny a claim for disability retirement benefits if the disability results from or is attributable to a preexisting condition, or is an aggravation of a preexisting condition. 1991 Op. Att’y Gen. No. 91-12.

Subsection (f) construed. — Standards in the 1989 amendment to subsection (f) of O.C.G.A. § 47-7-102, which provide for cessation of disability benefits under certain conditions, apply to disability retirees who retired prior to the effective date of the 1989 amendment. 1990 Op. Att’y Gen. No. 90-36.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, § 319 et seq.

ALR. — Causal connection between fireman's or policeman's performance of offi-

cial duties and his disability, for purpose of recovering disability benefits, 27 ALR2d 974.

Determination whether firefighter's disability is service-connected for disability pension purposes, 7 ALR4th 799.

47-7-103. Benefits payable to a named beneficiary upon death of a member before benefits have commenced or before benefits equal to the member's dues have been paid.

(a) In the event of the death of a member of the fund who is in good standing and who has not commenced receiving any benefits under this chapter, the designated beneficiary of such deceased member shall be entitled to be paid the amount of \$5,000.00, upon making proper application to the executive director of the fund. Such application shall be accompanied by a certified copy of the death certificate of the deceased member and such other information as may be required by the board.

(b) In the event of the death of a member of the fund who is in good standing, who has not elected survivor benefits under Option A or B as provided for in subsection (d) of Code Section 47-7-100, and who has commenced receiving benefits under this chapter, but who has not received total benefits in an amount equal to \$5,000.00, the member's named beneficiary shall be entitled to receive the difference between \$5,000.00 and the amount of benefits received by such deceased member, upon making application as provided for in subsection (a) of this Code section. (Ga. L. 1956, p. 368, § 6; Ga. L. 1962, p. 550, § 1; Ga. L. 2000, p. 562, § 9; Ga. L. 2010, p. 438, § 6/HB 1150.)

The 2010 amendment, effective July 1, 2010, substituted "executive director" for "secretary-treasurer" near the end of the first sentence of subsection (a) and inserted

" , who has not elected survivor benefits under Option A or B as provided for in subsection (d) of Code Section 47-7-100," near the beginning of subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Interest on return of contributions not authorized. — Fund does not authorize the payment of interest on the return of contributions, including those contributions made by late applicants for membership pursuant

to Ga. L. 1968, pp. 441 and 444, pertaining to membership for firefighters not previously members in the fund. 1970 Op. Att'y Gen. No. 70-82.

RESEARCH REFERENCES

C.J.S. — 62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, § 319 et seq.

ALR. — Relationship between fireman's

or policeman's performance of official duties and his death, for purpose of recovery of benefits by survivors, 27 ALR2d 1004.

Effect of divorce, remarriage, or annul-

ment, on widow’s pension or bonus rights or social security benefits, 85 ALR2d 242.

47-7-104. Benefits payable to volunteer firefighters erroneously found to be eligible for such benefits.

Any other provisions of law to the contrary notwithstanding:

- (1) Any person who served as a volunteer firefighter prior to March 3, 1955, and who began receiving retirement benefits at a later date from the fund, based on the board of trustees’ belief that such person was eligible for such benefits, but whose retirement benefits were ceased or canceled by the board of trustees based upon its subsequent realization that such person was not in fact eligible for such benefits; or
- (2) Any person who left service as a volunteer firefighter after receiving written notice from the executive director of the fund that such person was eligible for retirement benefits except for not having reached the age of 60 years, which written notice was later determined by the board to be erroneous,

shall be eligible to receive the retirement benefits under this chapter in the same manner as if such service had been rendered in a class nine or better fire department, regardless of the fact that such service was not rendered in a class nine or better fire department. (Ga. L. 1976, p. 973, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 1997, p. 1376, § 1; Ga. L. 2010, p. 438, § 7/HB 1150.)

The 2010 amendment, effective July 1, 2010, substituted “executive director of the fund that such person” for “secretary-treasurer of the fund that he” near the beginning of paragraph (2) and substituted “nine” for “eight” twice in the ending undesignated paragraph.

47-7-105. Refund of contributions upon withdrawal from the fund.

Upon proper application and approval of the board, any member who withdraws from the fund shall be paid all the moneys such individual contributed to the fund, less 5 percent. Any refunds granted under this Code section or any other provision of this chapter shall be without interest. (Ga. L. 1955, p. 339, § 11; Ga. L. 1991, p. 755, § 11.)

OPINIONS OF THE ATTORNEY GENERAL

Five percent of contributions retainable by fund upon membership withdrawal. — Upon the withdrawal of a firefighter or volunteer firefighter from membership in the fund, five percent of the dues contributed to the fund by such member may be retained in the fund. 1974 Op. Att’y Gen. No. U74-45.

ARTICLE 7

MISCELLANEOUS PROVISIONS

47-7-120. Reduction of benefits upon determination that available moneys are insufficient; liability of members of the board for such reductions.

If the moneys provided by this chapter are not sufficient at any time to enable the board to pay each person his benefits in full under this chapter, then those persons entitled to benefits shall be paid an equal amount, which, in the opinion of the board, the fund may provide. In no such event shall the board or any member of the board be liable to any beneficiary for any deficiencies in payments under this chapter. (Ga. L. 1955, p. 339, § 8; Ga. L. 1982, p. 3, § 47.)

RESEARCH REFERENCES

ALR. — Validity and effect of retroactive change in rate of employee's contribution to public pension fund, 78 ALR2d 1197.

47-7-121. Vesting of rights to benefits.

Benefits under this chapter shall be subject to future legislative change and revision and no member of this fund or any other persons shall be deemed to have any vested right to any benefits, except as may be provided in Code Section 47-7-100. (Ga. L. 1955, p. 339, § 10; Ga. L. 1976, p. 241, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1167 et seq.

C.J.S. — 62 C.J.S., Municipal Corporations, § 573 et seq. 67 C.J.S., Officers and Public Employees, § 314 et seq.

ALR. — Validity of legislation providing

for additional retirement or disability allowances for public employees previously retired or disabled, 27 ALR2d 1442.

Validity and effect of retroactive change in rate of employee's contribution to public pension fund, 78 ALR2d 1197.

47-7-122. Exemption of benefits under this chapter from garnishment, attachment, or other process; exemption from taxation; assignment of such benefits.

Benefits under this chapter shall not be subject to attachment, garnishment, levy, or other legal process against the firefighter, volunteer firefighter, or a designated beneficiary entitled to receive such benefits; nor shall such benefits or rights be assignable unless specifically provided for in this chapter. Benefits under this chapter are expressly declared to be exempt from any and all taxation, whether imposed by any state, county,

municipality, or other political subdivision. (Ga. L. 1955, p. 339, § 12; Ga. L. 1962, p. 550, § 2; Ga. L. 1997, p. 1376, § 1.)

RESEARCH REFERENCES

ALR. — Employee retirement pension attachment, levy, execution, or similar pro-benefits as exempt from garnishment, at-ceedings, 93 ALR3d 711.

47-7-123. Exemption of assets of the board from taxation.

The assets of the board, whether in the form of cash, securities, or real property, shall be deemed to be public property and exempt from any and all taxation, whether imposed by the state, or by any county, municipality, or political subdivision of this state. (Ga. L. 1955, p. 338, § 4; Ga. L. 1993, p. 86, § 1.)

RESEARCH REFERENCES

ALR. — Judicial review of decision, on merits, of claim upon public pension fund, 117 ALR 1408.

47-7-124. Disposition of funds abandoned by members separated from the service; notice; limitation on asserting certain claims.

(a) No claim shall be made against the fund for benefits or the return of contributions after the lapse of seven years from the date on which the executive director of the fund shall have mailed by first-class mail to the last known address of the firefighter or volunteer firefighter or other person eligible therefor, as such address is reflected by the records of the fund, a written notice that the firefighter or volunteer firefighter or other eligible person is or may be eligible for such benefits or return of contributions; and, in the event any claim for benefits or the return of contributions is barred in accordance with this subsection, the amounts thereof shall be the property of the Georgia Firefighters' Pension Fund. The bar period prescribed by this subsection shall not begin to run with respect to a firefighter or volunteer firefighter on leave of absence who has elected to leave his or her contributions in the fund until the failure of the firefighter or volunteer firefighter to provide written confirmation of his or her election to remain on leave of absence within 60 days of a not more frequent than biennial request for such confirmation mailed to the last known address of such firefighter or volunteer firefighter, as such address is reflected by the records of the fund.

(b) No action shall be brought contesting any determination of the board with respect to eligibility for membership or continued membership in the fund, creditable service, eligibility for retirement or disability benefits, the amount of retirement or disability benefits payable, or the

termination or suspension of retirement or disability benefits after the expiration of 60 days from the date on which written notice of the final determination of the board is mailed by first-class mail to the last known address of the firefighter or volunteer firefighter or of the designated representative thereof, as such address is reflected on the records of the fund; and no court shall have jurisdiction of any action brought after the expiration of such period. The written notice provided for in this subsection shall contain notice of the limitation established by this subsection.

(c) Any other provision of law notwithstanding, no action shall be brought or claim asserted by the board of trustees or on its behalf after April 1, 1989, against any person on account of the payment during the period July 1, 1984, through June 30, 1988, to any person otherwise eligible to receive disability benefits (hereinafter “disability retiree”) of an amount in excess of the disability benefits to which such disability retiree was lawfully entitled where such excess payment resulted from the erroneous determination by the board of trustees of the maximum monthly disability benefit payable to such disability retiree. After April 1, 1989, any such claim described in the foregoing sentence shall be forever barred. (Code 1981, § 47-7-124, enacted by Ga. L. 1983, p. 1310, § 5; Ga. L. 1989, p. 50, § 2; Ga. L. 1991, p. 130, § 1; Ga. L. 1997, p. 1376, § 1; Ga. L. 2010, p. 438, § 8/HB 1150.)

The 2010 amendment, effective July 1, 2010, in subsection (a), substituted “executive director” for “secretary-treasurer” near the beginning of the first sentence and inserted “or her” twice in the second sentence.

Editor’s notes. — Ga. L. 1989, p. 50, § 3, not codified by the General Assembly, provides: “Pursuant to the authority of Code Section 47-20-63 [repealed], this Act is not subject to the requirements of Chapter 20 of Title 47 of the Official Code of Georgia Annotated, known as the ‘Public Retirement Systems Standards Law,’ and pursuant to the former provisions of said Code Section 47-20-63 the General Assembly finds and declares that:

“(1) It is necessary for this Act to become effective without delay in order to avoid hardship to members and retired members of the Georgia Firemen’s Pension Fund;

“(2) The Georgia Firemen’s Pension Fund is actuarially sound; and

“(3) That the changes in Chapter 7 of Title 47 of the Official Code of Georgia Annotated providing for the Georgia Firemen’s Pension Fund which are accomplished by this Act will be fully financed by the Georgia Firemen’s Pension Fund without the necessity of any appropriation by the General Assembly and without adversely affecting the actuarial soundness of the Georgia Firemen’s Pension Fund.”

JUDICIAL DECISIONS

Notice period not extended. — Subsection (e) of O.C.G.A. § 9-11-6, providing that three days is added to the limitations period when notice is served by mail, does not apply to a disability application denial notice since

the statute specifically prescribed that notice be sent by first-class mail. *DeLoach v. Georgia Firemen’s Pension Fund*, 213 Ga. App. 202, 444 S.E.2d 137 (1994).

47-7-125. Availability of records of local departments to board; confidentiality.

Upon request, an authorized representative of the board shall have the power to inspect and copy or make extracts from the records of any fire department or volunteer fire department concerning any member of the fund or applicant for membership. It shall be the duty of the custodian of such records for the fire department or volunteer fire department to make such records available to an authorized representative of the board at the location at which such records are normally kept. Information so obtained by the board shall not be disclosed by the board except in connection with a matter involving the member or applicant for membership to whom the records relate. (Code 1981, § 47-7-125, enacted by Ga. L. 1983, p. 1310, § 5.)

47-7-126. Penalty for false statements or falsified records; correction of errors by the board.

(a) Any person who knowingly makes any false statements or falsifies or permits to be falsified any records of the fund in an attempt to defraud the fund shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00, imprisonment for up to 12 months, or both.

(b) If any change or error in the records of the fund results in any member or beneficiary receiving from it more or less than such member or beneficiary would have been entitled to receive had the records been correct, the board shall have the power to correct such error and to adjust the payments as far as is practicable and in such manner that the actuarial equivalent of any additional benefit to which such member or beneficiary was correctly entitled shall be paid or in such manner that any excess payment shall be recovered. (Code 1981, § 47-7-126, enacted by Ga. L. 1991, p. 755, § 12; Ga. L. 1992, p. 477, § 1.)

47-7-127. “Alternative investments” defined; code of ethics.

(a) As used in this Code section, the term “alternative investments” means the following investments:

(1) Privately placed investment pools, including, without limitation, private investment funds, such as:

- (A) Leveraged buyout funds;
- (B) Mezzanine funds;
- (C) Workout funds;
- (D) Debt funds;

- (E) Venture capital funds;
- (F) Merchant banking funds; and

(G) Funds of funds and secondary funds that include investments in privately placed investment pools described in this paragraph, in each case whether structured as a partnership, limited liability company, trust, corporation, joint venture, or other entity or investment vehicle of any type; organized or operating in one of the states or territories of the United States or outside the United States; invested in the United States or outside the United States or any combination thereof; or as investments of the type described in paragraph (2) of this subsection or other investments of any type or any combination thereof;

(2) Private placements and other private investments, including without limitation:

- (A) Leveraged buyouts;
- (B) Venture capital investment;
- (C) Equity investments, including, without limitation, preferred and common stock;
- (D) Warrants;
- (E) Options;
- (F) Private investments in public securities;
- (G) Recapitalizations;
- (H) Privatizations;
- (I) Mezzanine debt investments;
- (J) Distressed debt and equity investments, including, without limitation, cases in which the investor may take control of the issuer;
- (K) Other debt investments, whether secured or unsecured, senior or subordinated, recourse or nonrecourse, convertible, or otherwise;
- (L) Convertible securities;
- (M) Receivables;
- (N) Interests, as such term is referred to in Sections 501 and 502 of Title 11 of the United States Code;
- (O) Claims, as such term is defined in paragraph (5) of Section 101 of Title 11 of the United States Code;
- (P) Debt and equity derivative instruments of all types; and
- (Q) All other debt and equity private placements of all types, in each case whether issued by a partnership, limited liability company, trust,

corporation, joint venture, or other entity or vehicle of any type or whether the issuer is organized or does business in one of the states or territories of the United States or outside the United States; and

(3) Any distribution in kind received by the fund in connection with any investment described in paragraphs (1) and (2) of this subsection.

(b) In addition to the eligible investments authorized by Code Section 47-20-82, and without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84, the fund is authorized to invest in alternative investments in accordance with the provisions of this Code section. Further, when provisions of Code Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section limit a particular form of investment to a certain percentage of fund assets, the denominator will include alternative investments with all other investments, but the numerator for any such calculation will not include any alternative investments, even if any such alternative investment is of a like kind as the investments that are included in the numerator.

(c) An alternative investment may not exceed in any case 20 percent of the aggregate amount of:

(1) The capital to be invested in the applicable private pool, including all parallel pools and other related investment vehicles established as part of the investment program of the applicable private pool; and

(2) The securities being issued in the applicable private placement, in each case determined at the time such alternative investment is initially either made or committed to be made, as applicable, but taking into consideration any investments that have previously been or are concurrently being made or committed to be made.

Each alternative investment by the fund shall have previously been or shall be concurrently made or committed to be made by at least four other investors not affiliated with the issuer. Such four other investors shall be investing on substantially the same terms and conditions as those applicable to the investment by the fund to the extent such other investors are similarly situated with the fund. Alternative investments shall only be made in private pools and issuers that have at least \$100 million in assets, including committed capital, at the time the investment is initially made or committed to be made by the fund.

(d) Alternative investments by the fund may not in the aggregate exceed 5 percent of fund assets at any time. The board shall have the discretion to designate whether any investment that is permitted to be made as an alternative investment pursuant to this Code section and is also permitted to be made as an investment pursuant to Code Section 47-20-83 shall be treated for purposes of the 5 percent limitation and otherwise as an alternative investment made pursuant to this Code section or as an

investment made pursuant to Code Section 47-20-83. If the fund is not in compliance with the limitations imposed by this subsection, it shall make a good faith effort to come into compliance within two years and in any event as soon as practicable thereafter; provided, however, that during any period of noncompliance the fund shall not increase the percentage of its assets committed to be invested in alternative investments but shall be permitted during such period to continue to make investments as required by the then existing commitments of the fund to alternative investments made before the period of noncompliance.

(e)(1) As used in this subsection, the term “proprietary information” means information which meets all of the following criteria:

(A) The information is known outside the portfolio manager only to actual and potential investors who have signed a nondisclosure agreement prior to receiving any information, which nondisclosure agreement is required to be signed by participants in the investment, and breach of confidentiality by the investors would be grounds for terminating the investment contract between the investor and the portfolio manager;

(B) The information collected by the portfolio manager requires specialized expertise and experience to research companies in which the firm invests, the market for those companies, and their competitors. The portfolio manager has its own proprietary means of selecting companies in which to invest and for packaging portfolios for the limited partners, and research processes, methodologies and qualitative analysis of the data are unique and specialized in each firm's organization. Additional value may be added to the information with analysis, assessment, and conclusions, which serve as the basis for the investor's decision to invest in a portfolio; and

(C) The portfolio manager guards the secrecy and confidentiality of the information in their proprietary databases during all phases of its work, including research, analysis, marketing, and dissemination and access to the information within the portfolio manager or partnership is limited to the researchers, analysts, and senior management of the general partner who put the information together for the limited partners and the limited partners and the persons in their financial operations who have signed the nondisclosure agreement.

(2) In addition to those records identified in Code Section 47-1-14, and notwithstanding to provisions of Code Section 50-18-72, proprietary information shall be exempt from public disclosure for a period of two years from the date the fund enters into a nondisclosure as provided in paragraph (1) of this subsection.

(3) The fund shall make publicly available the following nonproprietary information after a period of one year from the date such records were created:

(A) The name of any alternative investment in which the fund has invested; excluding, in the case of an alternative investment in a privately placed investment pool, any information concerning the investments made by such privately placed investment pool;

(B) The date the fund first invested in an alternative investment described in paragraph (1) of this subsection;

(C) The aggregate amount of money, expressed in dollars, the fund has invested in alternative investments as of the end of any fiscal quarter;

(D) The aggregate amount of money and the value of any in kind or other distribution, in each case, expressed in dollars, the fund received from alternative investments;

(E) The aggregate internal rate of return or the result under any other such standard used by the fund in connection with alternative investments for the asset class and for the period for which the return or standard was calculated; and

(F) The remaining aggregate cost of alternative investments in which the fund has invested as of the end of any fiscal quarter.

(4) The provisions of this Code section shall not restrict access to information and records under process of law or by officers otherwise entitled to them for official purposes, but such information and records shall have the same confidential status under process or with such officers as it does in the hands of the fund, and such officers shall respect such confidentiality to the extent consistent with their separate powers and duties.

(5) On the first Monday in March of each year, the executive director of the board shall provide a report to the Governor and the chairpersons of the House and Senate standing committees on retirement detailing the performance of the investments made pursuant to this Code section including, without limitation, a clear statement of the aggregate loss or profit on such investments for the preceding year. This paragraph shall not be construed so as to require the disclosure of any information otherwise protected by this subsection.

(f) The board shall adopt a code of ethics for the consideration of and investment in and disposition of alternative investments.

(g) Funds invested pursuant to this Code section and any return on such investment shall remain funds of this fund. (Code 1981, § 47-7-127, enacted by Ga. L. 2010, p. 415, § 1/HB 249.)

Effective date. — This Code section became effective July 1, 2010.

Code Section 28-9-5, in 2010, “Code Section 47-1-14” was substituted for “Code section 47-1-14” in paragraph (e)(2).

Code Commission notes. — Pursuant to

CHAPTER 7A

GEORGIA CLASS NINE FIRE DEPARTMENT PENSION FUND

Sec.

47-7A-1 through 47-7A-127. [Repealed].

47-7A-1 through 47-7A-127.

Repealed by Ga. L. 2010, p. 438, § 9 and Ga. L. 2010, p. 1207, § 55, effective July 1, 2010.

Editor's notes. — This chapter consisted of Code Sections 47-7A-1 (Article 1), 47-7A-20 through 47-7A-25 (Article 2), 47-7A-40 and 47-7A-41 (Article 3), 47-7A-60 and 47-7A-61 (Article 4), 47-7A-80 through 47-7A-84 (Article 5), 47-7A-100 through 47-7A-103 (Article 6), and 47-7A-120 through 47-7A-127 (Article 7), relating to Georgia Class Nine Fire Department Pension Fund, and was based on Ga. L. 2000, p. 562, § 10; Ga. L. 2001, p. 21, § 1; Ga. L. 2002, p. 589, § 1; Ga. L. 2005, p. 54, §§ 4-6/HB 355; Ga. L. 2006, p. 426, § 2/HB 660.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and

inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

CHAPTER 8

SUPERIOR COURT JUDGES RETIREMENT FUND OF
GEORGIA; SENIOR JUDGES
(EMERITUS)

Article 1		Sec.	
Creation, Administration, and Management of the Assets of the Fund		47-8-44.	Payment of contributions on behalf of superior court judges.
		47-8-45.	Credit for service rendered during the year in which a superior court judge would become eligible for retirement and appointment as a senior judge.
Sec.		Article 4	
47-8-1.	Creation of the office of senior judge of the superior courts.	Appointment as Senior Judge; Compensation and Duties	
47-8-2.	Creation of the Superior Court Judges Retirement Fund of Georgia; trustees of the fund; payment to the fund.	47-8-60.	Appointment to the office of senior judge; resignation from the office of superior court judge.
47-8-3.	Power of trustees to make rules and regulations for administration of the fund.	47-8-61.	Term of office as senior judge; power of Governor to call upon senior judges to serve as superior court judges.
47-8-4.	Power of trustees to invest moneys of the fund.	47-8-62.	Salaries paid to senior judges.
47-8-5.	Annual audit of the fund.	47-8-63.	Duties of senior judges generally.
47-8-6.	Administration of the fund.	47-8-64.	Service as superior court judge; compensation.
Article 2		47-8-65.	Retention of office as a senior judge despite nonresidency; power to preside as a judge during the period of nonresidence.
Membership in and Contributions to the Fund		47-8-66.	Suspension of appointment to the office of senior judge while eligible for or holding an office of profit or trust under the Constitution of the United States or the Constitution of Georgia [Repealed].
47-8-20.	Membership in the fund; effect of contributions on eligibility for benefits and participation in the fund; payment of contributions for service rendered before becoming a member.	47-8-67.	Election of survivors benefits coverage; contributions required for such coverage; effect of such coverage on appointment to the office of senior judge; amount of survivors benefits.
47-8-21.	When payments shall be made to the fund.	47-8-68.	Withdrawal of payments to the fund; effect on right to participate in the fund.
Article 3		47-8-69.	Withdrawal of payments to the fund by superior court judges who have been disqualified or resigned from office; payments
Eligibility for Appointment as Senior Judge			
47-8-40.	Eligibility for appointment to the office of senior judge; salary; creditable service.		
47-8-41.	Eligibility for appointment as a senior judge or retirement; salary or benefits; creditable service.		
47-8-42.	Eligibility for retirement; benefits.		
47-8-43.	Payments by superior court judges to the fund.		

Sec.

upon the death of a superior court judge.

on payment of retirement benefits; order of liability for payment of benefits.

Article 5

Miscellaneous Provisions

47-8-80. Effect of sufficiency of the fund

OPINIONS OF THE ATTORNEY GENERAL

New judge after 1976 belongs to former Chapter 9 system. — One becoming a superior court judge for the first time after December 31, 1976, must belong to the Superior Court Judges Retirement System provided for by former Ch. 9 of this title (O.C.G.A. § 47-9-1 et seq.), and may not belong to the Superior Court Judges Retirement Fund of Georgia provided for by Ch. 8 of this title (O.C.G.A. § 47-8-1 et seq.). 1981 Op. Att'y Gen. No. 81-101.

Former O.C.G.A. § 47-9-90 does not apply to judge not member of this fund. — Judge who has never been a member of either the Trial Judges and Solicitors Retirement Fund under former Ch. 10 of this title (O.C.G.A. § 47-10-1 et seq.) or the Superior Court Judges Retirement Fund of Georgia under Ch. 8 of this title (O.C.G.A. § 47-8-1 et seq.), and has not performed any service under nor made contributions pursuant to either of these chapters, cannot be vested

with any rights, benefits, or elections granted and contained in them, and accordingly O.C.G.A. § 47-9-90 [repealed] has no application to such judge. 1981 Op. Att'y Gen. No. 81-101.

Appointment as juvenile court judge. — Superior court judge who retires under either of the two superior court judges retirement systems may be appointed to serve as a juvenile court judge; however, with one limited exception, his or her eligibility for senior judge status under either system will be suspended or delayed while appointed to that office. 1991 Op. Att'y Gen. No. 91-9.

Chapter 9 inapplicable to persons retiring under Chapter 8. — Provisions of the 1976 Superior Court Judges Retirement System, including the mandatory retirement provisions of O.C.G.A. § 47-9-70 [repealed], are not applicable to any person retiring under the 1945 Superior Court Judges Retirement Fund. 1992 Op. Att'y Gen. No. U92-2.

ARTICLE 1

CREATION, ADMINISTRATION, AND MANAGEMENT OF THE ASSETS OF THE FUND

47-8-1. Creation of the office of senior judge of the superior courts.

There is created the office of senior judge of the superior courts. Any judge of the superior court who was appointed judge of the superior courts, emeritus prior to December 31, 1976, is redesignated as senior judge of the superior courts effective December 31, 1976. Any judge of the superior courts who is eligible for appointment as judge of the superior courts, emeritus on December 31, 1976, or who becomes eligible after that date shall be designated as senior judge of the superior courts upon accepting such appointment. (Ga. L. 1945, p. 362, § 1; Ga. L. 1976, p. 586, § 31; Ga. L. 1982, p. 497, §§ 2, 3.)

OPINIONS OF THE ATTORNEY GENERAL

Widow’s benefits option not available. — 249, §§ 1-4 (see O.C.G.A. § 47-8-67) to General Assembly did not intend to make available to senior judges the “widow’s benefits” option available under Ga. L. 1970, p. judges of the superior courts. 1970 Op. Att’y Gen. No. 70-101.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 3. **C.J.S.** — 48A C.J.S., Judges, § 15.
63C Am. Jur. 2d, Public Officers and Employees, § 26 et seq.

47-8-2. Creation of the Superior Court Judges Retirement Fund of Georgia; trustees of the fund; payment to the fund.

There is created the Superior Court Judges Retirement Fund of Georgia. The trustees of the fund shall be the Governor, the state treasurer, and an appointee of the Governor who is not the Attorney General. All payments to this fund shall be made to the board of trustees. (Ga. L. 1945, p. 362, § 8; Ga. L. 1988, p. 426, § 1; Ga. L. 1993, p. 1402, § 12; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the middle of this Code section.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. **C.J.S.** — 48A C.J.S., Judges, § 182 et seq.
70 C.J.S., Pensions, § 1 et seq.

47-8-3. Power of trustees to make rules and regulations for administration of the fund.

The trustees of this fund are authorized to make such rules and regulations as are not inconsistent with this chapter for the proper administration of this chapter. (Ga. L. 1945, p. 362, § 17.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. **C.J.S.** — 70 C.J.S., Pensions, § 10.

47-8-4. Power of trustees to invest moneys of the fund.

The trustees of this fund shall have authority to invest any of the moneys received under this chapter in such manner as funds of the Employees’ Retirement System of Georgia are invested and reinvested. (Ga. L. 1945, p. 362, § 18; Ga. L. 1995, p. 651, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

47-8-5. Annual audit of the fund.

The state auditor is authorized to make an annual audit of the fund. (Ga. L. 1945, p. 362, § 19.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 77. **C.J.S.** — 81A C.J.S., States, § 388 et seq.

47-8-6. Administration of the fund.

The trustees shall contract with the Employees' Retirement System of Georgia for the administration of the fund. (Code 1981, § 47-8-6, enacted by Ga. L. 1995, p. 787, § 1.)

ARTICLE 2**MEMBERSHIP IN AND CONTRIBUTIONS TO THE FUND****47-8-20. Membership in the fund; effect of contributions on eligibility for benefits and participation in the fund; payment of contributions for service rendered before becoming a member.**

(a) All judges of the superior courts of this state who qualify under this chapter shall be eligible to participate in the fund. In order to be eligible to receive the benefits provided by this chapter, a judge of the superior court must begin making the contributions required by this chapter by December 31, 1964, or within 90 days after taking office as judge of the superior court, whichever date is later. Any judge who fails to begin making the contributions required by this chapter within the time required by this Code section shall be forever barred from participating in the fund.

(b) Any judge of a superior court who desires to qualify under this chapter to participate in the fund shall, as a prerequisite to such participation, pay into the fund a sum of money equal to the contributions required by this chapter from the date of the beginning of his service as judge of a superior court until the date such sum of money is paid into the fund. At the same time he shall pay into the fund an amount of money equivalent to 6 percent simple interest on such sum of money for each year from the beginning of his service as a judge of a superior court until the date the contributions are paid into the fund. (Ga. L. 1945, p. 362, § 9; Ga. L. 1959, p. 301, § 1; Ga. L. 1964, p. 720, § 1; Ga. L. 1982, p. 3, § 47.)

OPINIONS OF THE ATTORNEY GENERAL

No contribution required for service as city court solicitor. — For participation in the superior court judge emeritus program (now Superior Court Judges Retirement Fund), there is no provision which requires a contribution for the years of service as a solicitor of the city court. 1972 Op. Att’y Gen. No. 72-8.

Benefits from separate retirement systems. — Person may receive benefits from

both the Judicial Retirement System and the appellate judge’s option of the Employee’s Retirement System, assuming the eligibility requirements of both statutes have been met. 2000 Op. Atty. Gen. No. U2000-8.

Person may not draw benefits from the Judicial Retirement System while simultaneously drawing compensation as an appellate court judge. 2000 Op. Atty. Gen. No. U2000-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1174 et seq., 1183, 1228, 1252.

47-8-21. When payments shall be made to the fund.

Judges making payments to the fund shall make their payments at such time and at such regular intervals, at least every six months, as may be fixed by the trustees of the fund. (Ga. L. 1945, p. 362, § 13.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

ARTICLE 3

ELIGIBILITY FOR APPOINTMENT AS SENIOR JUDGE

47-8-40. Eligibility for appointment to the office of senior judge; salary; creditable service.

(a) Any judge of a superior court of this state who is in at least his nineteenth year of service as judge of a superior court or who had been in service as a superior court judge for 19 years as of March 9, 1945, and who is still in such service shall be eligible for appointment as a senior judge under this chapter, provided that he has made payments under Code Section 47-8-43 for at least 19 years. Service as district attorney of a judicial circuit; as judge of or solicitor of a city court, county court, or any court of record of the state from which an appeal may be taken directly to the Court of Appeals of Georgia; membership in the General Assembly; or service in the armed forces of the United States occasioned by the national emergencies of World War I, World War II, or the Korean Conflict shall be allowable in computing the required 19 years of service, provided that at least four years have been served as judge of a superior court. Credit for service in the

General Assembly shall be for the entire term of office to which such person was elected and served.

(b) Any judge of a superior court who has reached 68 years of age and who is in at least his tenth year of service as a judge of a superior court shall be eligible for appointment as a senior judge.

(c) Any judge of a superior court who has been in service as a judge of a superior court for ten years and who becomes disabled and is unable to continue his duties as judge of the superior court shall be eligible for appointment as senior judge upon presentation of satisfactory evidence of such disability to the board of trustees and a recommendation of appointment by a majority of the board of trustees.

(d) Any judge of a superior court who has reached age 65 and has completed ten years of actual service as judge of a superior court, as distinguished from creditable service, shall be eligible for appointment to senior judge and for early retirement at one-half of the salary paid to superior court judges, provided that he has made the payments required under Code Section 47-8-43.

(e) Any former judge of a superior court who has reached the age of 75, who has served 16 years as judge of a superior court, who reached the age of 68 while serving such 16 years as judge of the superior court, and who has also served four years in the General Assembly prior to his service as judge of the superior court shall be eligible for appointment by the Governor to the office of senior judge. Such person shall be required by the board of trustees to pay into the retirement fund a sum equal to 5 percent of the salary received by such judge from March 9, 1945, to the time he reached 68 years of age. Such person, when so appointed by the Governor, shall receive a salary equivalent to one-half of the salary then being paid to the judge of the superior court of the circuit in which he served and his actual expense incurred while holding court in a county other than that of his residence, provided that the sum to be received shall not exceed \$4,000.00 per annum.

(f) Any other provision of this chapter to the contrary notwithstanding, any judge of a superior court of any circuit who, during a term of office to which he was elected, resigned for the purpose of entering the armed forces of the United States during World War II, who did enter the armed forces, and who thereafter resumed duties as a judge of a superior court of his judicial circuit during the term of office to which he had been elected shall, for all purposes, be considered to have been continuously in service as judge of the superior court during that whole term of office. The whole of that term of office shall be considered in computing his period of service for all purposes under this chapter.

(g) Military service time in the armed forces of the United States during time of war shall be computed in addition to all other service under the terms of this chapter.

(h) In granting credit for service in the armed forces of the United States, one year of credit shall be granted for each year or fraction of a year of such service.

(i) From and after March 13, 1957, any service as an assistant district attorney of a judicial circuit, which office is provided for by law, or as a district attorney pro tempore pursuant to Code Section 15-18-5 shall be allowable in computing years of service as a judge of the superior court under this Code section, provided that sums due under this chapter for such service have been paid. (Ga. L. 1945, p. 362, § 2; Ga. L. 1946, p. 228, § 1; Ga. L. 1950, p. 283, §§ 1, 5; Ga. L. 1950, p. 341, § 1; Ga. L. 1952, p. 293, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 108, § 1; Ga. L. 1955, p. 152, § 1; Ga. L. 1956, p. 380, § 1; Ga. L. 1957, p. 82, §§ 1-3; Ga. L. 1957, p. 486, § 1; Ga. L. 1960, p. 161, § 1; Ga. L. 1961, p. 64, § 1; Ga. L. 1961, p. 429, § 1; Ga. L. 1965, p. 102, § 1; Ga. L. 1968, p. 275, § 1; Ga. L. 1976, p. 586, § 32; Ga. L. 1982, p. 3, § 47; Ga. L. 2000, p. 131, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Special group of judges created by statutory scheme. — Statutory scheme creating the superior court judges emeritus program (now Superior Court Judges Retirement Fund) envisions the creation of a special group of judges to perform duties as provided by law. 1975 Op. Att’y Gen. No. U75-3.

Senior judge may perform marriage ceremony. — When a statutory provision separate from Ga. L. 1945, p. 362 (see O.C.G.A. Ch. 8, T. 47) provides that the ministerial act of performing a marriage ceremony may be carried out by any judge, a judge of the superior courts emeritus (now senior judge of the superior courts) may perform that function. 1975 Op. Att’y Gen. No. U75-3.

Judge entering nineteenth year of service is eligible. — To be eligible for the position of judge of the superior courts emeritus (now senior judge of the superior courts) and retirement on two-thirds of the salary paid the judge of the superior court, a judge need only enter into the judge’s nineteenth year of service and need not complete that year. 1957 Op. Att’y Gen. p. 78.

No limitation on work time required in fourth year. — There is no limitation in subsection (a) of this statute on the minimum period of time which must be worked as a superior court judge in the fourth year to meet the four-year requirement; thus, it would appear that one day of work as a judge in the fourth year would suffice. 1972 Op. Att’y Gen. No. 72-8 (see O.C.G.A. § 47-8-40).

When judge, or widow, entitled to disability benefits. — Superior court judge is entitled to disability benefits although the judge has not attained the required retirement age, provided the judge otherwise meets the requirements of Ga. L. 1945, p. 362 (see O.C.G.A. Ch. 8, T. 47); if such a judge makes the election provided by these provisions, fully complies with the statutory terms, and dies after being entitled to disability benefits, the judge’s widow thereby would be entitled to the benefits provided, instead of being forced to accept a return of contributions in accordance with Ga. L. 1945, p. 362, § 15 (see O.C.G.A. § 47-8-69). 1968 Op. Att’y Gen. No. 68-331.

Past service as assistant district attorney not creditable. — Service as assistant district attorney rendered prior to section’s enactment and approval is not creditable toward an appointment to the office of judge of the superior courts emeritus (now senior judge of the superior courts). 1975 Op. Att’y Gen. No. 75-14 (see O.C.G.A. § 47-8-40).

Armed forces service during World War II creditable. — Judge of the superior courts is entitled to count the days, months, and years the judge has served in the armed forces of the United States during World War II when computing the judge’s 19 years of service. 1968 Op. Att’y Gen. No. 68-53.

Cadet midshipman service creditable. — Service rendered as cadet midshipman in

United States Merchant Marine Cadet Corps is creditable service under the provisions of this statute. 1974 Op. Att'y Gen. No. U74-108 (see O.C.G.A. § 47-8-40).

Calculate year on 12-month period, not calendar year. — "Fraction of a year" for

armed forces' credit means fraction of a 12-month period, not fraction of a calendar year; moreover, there is no statutory basis for granting a full year's credit for a fraction of a year's service in a civilian state office. 1972 Op. Att'y Gen. No. U72-91.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 5.
63C Am. Jur. 2d, Public Officers and Employees, § 54.

C.J.S. — 48A C.J.S., Judges, § 28 et seq.

47-8-41. Eligibility for appointment as a senior judge or retirement; salary or benefits; creditable service.

(a) Any judge of a superior court of this state who is in at least his nineteenth year of service as a judge of a superior court of this state, any service as district attorney of a judicial circuit, as a judge of or solicitor of a city or county court of this state, or membership in the General Assembly or service in the armed forces of the United States occasioned by the national emergencies of World War I, World War II, or the Korean Conflict, or assistant district attorney or district attorney pro tempore as herein provided, being allowable in computing such 19 years' service, provided at least one complete term or its equivalent number of years in two or more terms have been served as judge of a superior court of this state or who has already been in service for 19 years as a judge of a superior court of this state on March 9, 1945, and who is still in service as such officer, shall be eligible for appointment at his pleasure and shall be eligible to receive the benefits now or hereafter offered judges of the superior courts, provided that the General Assembly retirement service credit shall be for the entire term of office to which such person was elected and served.

(b) Any judge of a superior court of this state qualifying under any one of the following provisions shall be eligible to retire at his pleasure and shall be eligible to receive one-half of the salary now or hereafter paid to judges of the superior courts by the state:

(1) He has reached the age of 65 years and has completed ten years of service as a judge of the superior courts of this state, as distinguished from creditable service, and has for the period of his service as such judge made payments to the fund at the rate herein specified, and has been appointed under this chapter as a senior judge of the superior courts, as provided in Code Section 47-8-40; or

(2) Any judge of a superior court of this state who has been in service as a judge of the superior court for at least ten years and who becomes disabled from continuing his duties as judge of the superior court and who shall have attained the age of 62 years, satisfactory evidence of such

disability having been presented to the board of trustees and a recommendation of appointment having been made by a majority of the board. (Ga. L. 1945, p. 362, § 11; Ga. L. 1946, p. 228, § 2; Ga. L. 1950, p. 283, § 3; Ga. L. 1952, p. 293, § 3; Ga. L. 1953, Nov-Dec. Sess., p. 108, § 3; Ga. L. 1955, p. 152, § 3; Ga. L. 1956, p. 380, § 3; Ga. L. 1960, p. 161, §§ 3, 3A; Ga. L. 1976, p. 586, § 35; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 86, § 1; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “district attorney pro tempore” for “district attorney pro tem.” in the middle of subsection (a).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to

provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 127, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

OPINIONS OF THE ATTORNEY GENERAL

Judge entering nineteenth year of service is eligible. — To be eligible for the position of judge of the superior courts emeritus (now senior judge of the superior courts) and retirement on two-thirds of the salary paid the judge of the superior court, a judge need only enter into the judge’s nineteenth year of service and need not complete that year. 1957 Op. Att’y Gen. p. 78.

Judge, or widow, entitled to disability benefits. — Superior court judge is entitled to disability benefits although the judge has not attained the required retirement age, pro-

vided the judge otherwise meets the requirements of Ga. L. 1945, p. 362 (see O.C.G.A. Ch. 8, T. 47); if such a judge makes the election provided by these provisions, fully complies with the statutory terms, and dies after being entitled to disability benefits, the judge’s widow thereby would be entitled to the benefits provided, instead of being forced to accept a return of contributions in accordance with Ga. L. 1945, p. 362, § 15 (see O.C.G.A. § 47-8-69). 1968 Op. Att’y Gen. No. 68-331.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 13. 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1192 et seq., 1228 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 46 et seq., 182 et seq., 204 et seq.

47-8-42. Eligibility for retirement; benefits.

No judge shall be eligible for benefits under this chapter unless he has qualified under one of the following provisions:

- (1) Retirement at two-thirds’ the salary paid to superior court judges:

(A) Any judge of a superior court of this state who is in at least his nineteenth year of service as a judge of the superior court computed as provided in this chapter; or

(B) Any judge of a superior court already in service for 19 years on March 9, 1945, as a judge of a superior court and who is still in service as such officer.

(2) Retirement at one-half of the salary paid to superior court judges:

(A) Any judge of a superior court of this state who has attained the age of 65 years and who has completed ten years of actual service as a judge of a superior court; or

(B) Any judge of a superior court who has been in service as a judge of a superior court for at least ten years and who becomes disabled from continuing his duties as judge of the superior court, who shall have attained the age of 62 years, satisfactory evidence of such disability having been presented to the board of trustees and a recommendation of appointment having been made by a majority of the board. (Ga. L. 1945, p. 362, § 12; Ga. L. 1946, p. 228, § 3; Ga. L. 1950, p. 283, § 4; Ga. L. 1952, p. 293, § 4; Ga. L. 1953, Nov-Dec. Sess., p. 108, § 4; Ga. L. 1955, p. 152, § 4; Ga. L. 1976, p. 586, § 36; Ga. L. 1992, p. 477, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Judge, or widow, entitled to disability benefits. — Superior court judge is entitled to disability benefits although the judge has not attained the required retirement age, provided the judge otherwise meets the requirements of Ga. L. 1945, p. 362 (see O.C.G.A. Ch. 8, T. 47); if such a judge makes the election provided by these provisions, fully

complies with the statutory terms, and dies after being entitled to disability benefits, the judge's widow thereby would be entitled to the benefits provided, instead of being forced to accept a return of contributions in accordance Ga. L. 1945, p. 362, § 15 (see O.C.G.A. § 47-8-69). 1968 Op. Att'y Gen. No. 68-331.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 182 et seq., 204 et seq.

47-8-43. Payments by superior court judges to the fund.

(a) Any judge of a superior court shall be permitted to pay into the fund the amount of 5 percent of the salary paid to such judge by the state and any such judge who makes payment into this fund shall be eligible to retire from office as a senior judge at a salary of two-thirds of the salary now or hereafter paid to judges of the superior courts by the State of Georgia, provided he meets the following conditions:

(1) He is in at least his nineteenth year of service as a judge of the superior courts of this state or has already been in service for 19 years as

a judge of the superior courts of this state on March 9, 1945, and has been appointed as a senior judge as provided in Code Section 47-8-40;

(2) He has for a period of 19 years made payments to the fund at the rate specified in this Code section. However, all judges who are over 50 years of age shall be eligible to retire when they have attained the age of 68 years at two-thirds' the salary paid by the state to such judges, provided such judges have served for at least 19 years and have made payments to the fund at the rate therein specified until they reached the age of 68 years, such payments to commence from March 9, 1945, provided that any judge who shall, by virtue of the amendment of this chapter approved February 16, 1950, be made eligible for appointment as a senior judge and who shall not have made payments to the Superior Court Judges Retirement Fund of Georgia at the time of the passage of such amendment shall be required to pay into the fund the amount fixed by this chapter for each of the years that such judge has served as a superior court judge from January 1, 1951, up to and including the year that such judge may be appointed as a senior judge, provided such judge has served at least four years in one complete term or its equivalent number of years in two or more terms as judge of the superior courts. Any superior court judge, in order to qualify under this Code section, who has previously served as district attorney shall have contributed to the District Attorneys Retirement Fund from the date of the enactment of the District Attorneys Retirement Fund or from the time such judge became a district attorney, whichever is the later date. In the event that a judge shall receive credit under this subsection for service as a district attorney, the board of trustees of the District Attorneys Retirement Fund is authorized and directed to transfer the amounts which such judge has contributed to such fund to the Superior Court Judges Retirement Fund of Georgia; and

(3) Any other provisions notwithstanding, any judge of the superior courts who had not made payments to the Superior Court Judges Retirement Fund of Georgia at the time of the passage of the amendment of this chapter, approved February 16, 1950, and who is in his nineteenth year of service as a judge of the superior courts, district attorney, or judge or solicitor of a state, county, or city court or any court of record of the State of Georgia from which an appeal may be taken directly to the Court of Appeals of Georgia, shall make payments as provided by law to the Superior Court Judges Retirement Fund of Georgia from January 1, 1951, to the date of appointment as a senior judge under this chapter, provided that nothing in this subsection shall be construed so as to authorize the refund of any amounts previously paid into the Superior Court Judges Retirement Fund of Georgia.

(b) All judges of the superior courts shall be permitted to pay into the fund the amount of 5 percent of the salary paid to such judges by the State of Georgia and any of such judges who have made payment to this fund

shall be eligible to retire from office as senior judge at a salary of one-half of the salary now or hereafter paid to judges of the superior court by the State of Georgia, provided he meets either of the following conditions:

(1) He has reached the age of 65 years and has completed ten years of service as a judge of the superior courts of this state, as distinguished from creditable service, and has for the period of his service as such judge made payments to the fund at the rate specified in this subsection and has been appointed as a senior judge of the superior courts, as provided in Code Section 47-8-40; or

(2) He has for a period of ten years made payment to such fund at the rate specified in this subsection and is prevented because of incapacity from continuing his duties as judge of the superior courts and has been appointed as a senior judge, as provided in Code Section 47-8-40, provided that any amount accruing prior to December 11, 1953, may be paid at such times as the board of trustees of the Superior Court Judges Retirement Fund of Georgia may direct. (Ga. L. 1950, p. 283, § 2; Ga. L. 1952, p. 293, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 108, § 2; Ga. L. 1955, p. 152, § 2; Ga. L. 1960, p. 161, §§ 4, 4A; Ga. L. 1961, p. 429, §§ 2, 3; Ga. L. 1976, p. 586, § 34; Ga. L. 1987, p. 146, § 1; Ga. L. 1993, p. 86, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

No contribution required for service as city court solicitor. — For participation in the superior court judge emeritus program (now Superior Court Judges Retirement Fund), there is no provision which requires a contribution for the years of service as a solicitor of the city court. 1972 Op. Att’y Gen. No. 72-8.

Senior judge’s salary increase is two-thirds of superior court judge’s. — Senior judges are entitled to salary increase of two-thirds of increase given superior court judges; they will continue to perform the same duties, and the “now or hereafter” language of this statute clearly appertains. 1973 Op. Att’y Gen. No. 73-75 (see O.C.G.A. § 47-8-43).

Judge, or widow, entitled to disability benefits. — Superior court judge is entitled to disability benefits although the judge has not attained the required retirement age, provided the judge otherwise meets the requirements of Ga. L. 1945, p. 362 (see O.C.G.A. Ch. 8, T. 47); if such a judge makes the election provided by these provisions, fully complies with the statutory terms, and dies after being entitled to disability benefits, the judge’s widow thereby would be entitled to the benefits provided, instead of being forced to accept a return of contributions in accordance with Ga. L. 1945, p. 362, § 15 (see O.C.G.A. § 47-8-69). 1968 Op. Att’y Gen. No. 68-331.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 13. 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 182 et seq., 204 et seq.

47-8-44. Payment of contributions on behalf of superior court judges.

(a) On and after July 1, 1980, the employer shall pay to the fund on each and every payroll period employee contributions on behalf and to the

credit of such judges of the superior court in an amount equal to the amount which would be paid to the annuity savings fund pursuant to Code Section 47-2-54 if the judge of the superior court were a member of the Employees' Retirement System of Georgia. Such judges of the superior courts shall continue to have deducted from their state salaries the additional amount of employee contributions required by this chapter.

(b) The monthly employee contributions made by the employer on behalf of a judge of the superior courts as provided in subsection (a) of this Code section shall be used in the computation of the judge's state salary for the computation of retirement benefits.

(c) With respect to any senior judges who have retired or who will retire in the future, the employee contributions paid by the employer on behalf of an active judge of the superior court as provided in subsection (a) of this Code section shall be included in current salary and used for the purpose of computing the monthly retirement benefits provided by this chapter. The monthly retirement benefit of each heretofore retired senior judge shall be increased accordingly, effective July 1, 1980.

(d) All members shall retain, have, and be subject to all other rights, privileges, obligations, and duties provided for by other provisions of this chapter; and all such other provisions shall remain of full force and effect with respect to any matter not specifically provided for in this Code section. (Ga. L. 1980, p. 925, § 12.)

47-8-45. Credit for service rendered during the year in which a superior court judge would become eligible for retirement and appointment as a senior judge.

In computing the number of years of service, wherever necessary to become eligible for appointment and retirement under this chapter, the entire year in which a superior court judge would become eligible shall be computed as a part of the required number of years of service, although actually he served for only a part of that year. (Ga. L. 1953, Nov-Dec. Sess., p. 108, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.

C.J.S. — 48A C.J.S., Judges, §§ 182, 204.

ARTICLE 4

APPOINTMENT AS SENIOR JUDGE; COMPENSATION AND DUTIES

47-8-60. Appointment to the office of senior judge; resignation from the office of superior court judge.

The Governor shall appoint to the position of senior judge anyone eligible under this chapter who advises the Governor in writing that he desires to resign from the office of judge of the superior courts and accept appointment as a senior judge. Upon such appointment by the Governor and issuance of the commission by the Governor, the resignation shall automatically become effective. (Ga. L. 1945, p. 362, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Must serve as superior court judge when appointed. — Superior court judge must be serving as a judge at the time of appointment to the office of judge of the superior courts emeritus (now senior judge). 1976 Op. Att'y Gen. No. 76-1.

Two exceptions when superior court judgeship not prerequisite. — Superior court judge must be serving as such in order to apply for an appointment as judge of the superior courts emeritus (now senior judge); however, there are two exceptions to this rule: (1) a judge of the superior courts who is eligible for appointment as a judge of the superior courts emeritus (now senior judge), but who has not yet been so appointed, who is elected or appointed to, or qualifies for, an

office of profit or trust under the Constitution of the United States or the Constitution of Georgia, may assume such office of profit or trust, and the judge's right to appointment (the judge's eligibility) shall be suspended during the time the judge holds such office of profit or trust; and (2) any superior court judge who elects to extend retirement benefits to the judge's widow under the terms of the Superior Court Judges Retirement Fund is eligible for an appointment as a judge emeritus (now senior judge), whether or not the judge is holding office at the time of the judge's appointment by the Governor, assuming, of course, the judge has the requisite service. 1974 Op. Att'y Gen. No. 74-23.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 7. 63C Am. Jur. 2d, Public Officers and Employees, § 81.

C.J.S. — 48A C.J.S., Judges, § 22 et seq.

47-8-61. Term of office as senior judge; power of Governor to call upon senior judges to serve as superior court judges.

All persons appointed as senior judges under this chapter shall hold such office for life. The Governor may call upon such judges to serve as judges of the superior courts when the regular judge for some reason is unable to serve. Such judges are also authorized to serve in the superior courts as may be otherwise provided by law. (Ga. L. 1945, p. 363, § 5; Ga. L. 1951, p. 493, § 1; Ga. L. 1958, p. 318, § 1; Ga. L. 1973, p. 911, § 1; Ga. L. 1994, p. 722, § 1.)

JUDICIAL DECISIONS

Constitutionality. — Even though the position of senior judge is not an elected one, Ga. Const. 1983, Art. VI, Sec. I, Par. III allows a senior judge to exercise judicial power in the superior courts when the assistance of a senior judge is necessary. O.C.G.A. §§ 15-1-9.2 and 47-8-61 are simply the statutory enactments pursuant to the constitution. *Smith v. Langford*, 271 Ga. 221, 518 S.E.2d 884 (1999).

There is no merit to the argument that the authorization for the service of senior judges conflicts with Ga. Const. 1983, Art. VI, Sec. I, Par. I, vesting judicial power in designated courts, because creation of the position of senior judge does not establish a separate judicial forum. *Smith v. Langford*, 271 Ga. 221, 518 S.E.2d 884 (1999).

Prohibition on practice of law limited to federal courts. — Those judges who have become senior judges under the 1945 Superior Court Judges Retirement Fund Act (O.C.G.A. § 47-8-1 et seq.), or who are eligible to become senior judges under that Act, are not prohibited from practicing law; those judges are only prohibited by the Act from practicing law in the federal courts. *State v. McMillan*, 253 Ga. 154, 319 S.E.2d 1 (1984).

Prohibition on practice of law unconstitutional. — Prohibition in O.C.G.A. § 47-8-61 on senior judges retired under the 1945 Act from “practicing as attorneys, proctors, or solicitors in any court of the United States”

is a violation of the due process rights of such judges and is of no force and effect. *State v. McMillan*, 253 Ga. 154, 319 S.E.2d 1 (1984).

Governor’s order to determine “any and all” cases unauthorized. — An order of the Governor that a judge emeritus (now senior judge) hear and determine “any and all other cases which may be pending” and “any and all other cases which may properly come before said court for disposition” is manifestly unauthorized by law, and hence confers no authority upon the judge to hear and determine such cases. *Trammell v. Trammell*, 220 Ga. 293, 138 S.E.2d 562 (1964).

Senior judge unauthorized to certify bill of exceptions. — Because a superior court judge emeritus (now senior judge) had not been granted constitutional or statutory authority to serve as a superior court judge, except when the Governor was authorized to call upon the judge to do so, or the judge was selected to serve as such in a civil case under the provisions of former Code 1933, §§ 24-2623, 2624, 2625, and 2626 (see O.C.G.A. §§ 15-6-13 and 15-6-14), it necessarily followed that a superior court judge emeritus (now senior judge) not within these exceptions was wholly without the jurisdiction or power to certify a bill of exceptions (now abolished) in a case tried by a superior court judge. *Chambers v. Wynn*, 217 Ga. 381, 122 S.E.2d 571 (1961).

OPINIONS OF THE ATTORNEY GENERAL

Restrictions applied to retired superior court judges. — It is reasonable to assume that restrictions similar to those applied to

retired superior court judges would also be applicable to retired probate judges. 1981 Op. Att’y Gen. No. 81-79.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 9 et seq., 19, 47 et seq.

C.J.S. — 48A C.J.S., Judges, § 22 et seq.

ALR. — What amounts to practice of law within contemplation of constitutional or statutory provision which makes such prac-

tice a condition of eligibility to a judicial office or forbids it by one holding a judicial position, 106 ALR 508.

Propriety and permissibility of judge engaging in practice of law, 89 ALR2d 886.

47-8-62. Salaries paid to senior judges.

Except as otherwise provided, a senior judge shall receive from the state an annual salary equal to two-thirds of the salary provided by law to be paid by the state to a judge of the superior court at the time of his appointment to the position of senior judge under this chapter. In addition to this salary, a senior judge shall receive from the counties of the circuit of which he had lately been judge a salary equal to two-thirds of the amounts which had been paid to him as judge by those counties at the time of his resignation as judge of the superior court and his appointment as senior judge. (Ga. L. 1945, p. 362, § 4.)

JUDICIAL DECISIONS

Cited in *Stokes v. Fortson*, 234 F. Supp. 575 (N.D. Ga. 1964).

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 57. **C.J.S.** — 48A C.J.S., Judges, § 187 et seq.

47-8-63. Duties of senior judges generally.

It shall be the duty of the senior judges to consult with the Justices of the Supreme Court and the Judges of the Court of Appeals and to advise and assist each of such courts in the revision of the rules of practice of such courts and in handling the administrative duties now or hereafter placed upon such courts or the members thereof by law. It shall also be the duty of the senior judges to consult with the Attorney General and the assistants to the Attorney General upon legal matters, when their advice and consultation are requested. (Ga. L. 1945, p. 362, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 12. **C.J.S.** — 48A C.J.S., Judges, § 136 et seq.

47-8-64. Service as superior court judge; compensation.

Senior judges may serve as judges of the superior courts as provided for in Chapter 1 of Title 15 or as otherwise provided by law. A senior judge serving as judge of the superior court shall be compensated as provided for in Code Section 15-1-9.2 or as otherwise provided by laws enacted after July 1, 1989; and such compensation for such service shall not affect, diminish, or otherwise impair the payment or receipt of any retirement or pension benefits of such judge. (Ga. L. 1962, p. 547, §§ 1-3; Ga. L. 1970, p. 204,

§§ 1-4; Ga. L. 1973, p. 911, § 4; Ga. L. 1976, p. 586, § 37; Ga. L. 1981, p. 1386, § 2; Ga. L. 1989, p. 832, § 2.)

Cross references. — Judge's exercise of judicial power in any court upon request of that court's judges, Ga. Const. 1983, Art. VI,

Sec. I, Para. III. Requesting judicial assistance from other courts generally, § 15-1-9.1.

JUDICIAL DECISIONS

Section follows Constitution and limits power of superior court judges to request temporary service only of superior court judges emeritus (now senior judges). *Spurlin v. State*, 222 Ga. 179, 149 S.E.2d 315 (1966).

Senior judge has authority to serve in superior court when the chief judge makes a timely oral request for the senior judge's services, this request is confirmed in writing, the senior judge is familiar with the case by virtue of having handled earlier proceedings, and the parties proceed without objection to the trial. *Cheely v. State*, 251 Ga. 685, 309 S.E.2d 128 (1983).

Senior judge cannot serve in superior court until called. — Superior court judge emeritus (now senior judge) has no constitutional or statutory power to serve in a superior court until the judge is called upon to do so in the manner and way provided by law. *Adams v. Payne*, 219 Ga. 638, 135 S.E.2d 423 (1964).

Senior superior court judge service for disqualified judge. — Senior superior court judges are not ineligible to serve in place of a disqualified judge simply because the disqualified judge cannot request the service of a designated senior judge. *Shoemaker v. Woodland Equities, Inc.*, 252 Ga. 389, 313 S.E.2d 689 (1984).

When presumed that senior judge unable to perform. — When the hearing on a motion for new trial is held and ruled upon by the presiding judge of the superior court of the county when the case is tried, all parties being represented, and no objection is made as to the authority of the presiding judge, it will be presumed that the judge emeritus (now senior judge) was unable to perform such an act and that the presiding judge was authorized to hear and determine such a motion. *State Hwy. Dep't v. Hilliard*, 114 Ga. App. 328, 151 S.E.2d 491 (1966).

Cited in *Morris v. Clark*, 189 Ga. App. 228, 375 S.E.2d 616 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Restrictions applied to retired superior court judges. — It is reasonable to assume that restrictions similar to those applied to

retired superior court judges would also be applicable to retired probate judges. 1981 Op. Att'y Gen. No. 81-79.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, §§ 12, 19.

C.J.S. — 48A C.J.S., Judges, § 150 et seq.

47-8-65. Retention of office as a senior judge despite nonresidency; power to preside as a judge during the period of nonresidence.

(a) Any other provision of law to the contrary notwithstanding, any person who has been appointed to the office of senior judge under this chapter and who is (1) 65 years of age or older or (2) any person who, after being appointed to the office of senior judge under this chapter, becomes disabled from continuing his official duties as a senior judge may become a

nonresident of this state and may upon a doctor's order retain his office as a senior judge despite his nonresidence in the state and may continue to receive his retirement salary as a senior judge under this chapter. The disability of a senior judge shall be determined under the procedure specified in subsection (c) of Code Section 47-8-40.

(b) No senior judge who is a nonresident of the state shall preside in any court of this state while a nonresident. (Ga. L. 1980, p. 458, § 1.)

47-8-66. Suspension of appointment to the office of senior judge while eligible for or holding an office of profit or trust under the Constitution of the United States or the Constitution of Georgia.

Reserved. Repealed by Ga. L. 1994, p. 722, § 2, effective July 1, 1994.

Editor's notes. — This Code section was based on Ga. L. 1960, p. 161, § 2, and Ga. L. 1982, p. 3, § 47.

47-8-67. Election of survivors benefits coverage; contributions required for such coverage; effect of such coverage on appointment to the office of senior judge; amount of survivors benefits.

(a) Any superior court judge holding office on March 11, 1970, shall have the option, which must be exercised, if at all, by not later than July 1, 1970, of electing to have his surviving spouse receive for the remainder of her life a benefit which, except as otherwise provided in subsection (c) of this Code section, shall be equal to the salary such judge would have received had he lived and been appointed senior judge, subject to the following conditions:

(1) Any judge so electing shall pay an amount equal to 2 percent of his or her state salary for each year of prior service as a judge of superior court up to the time of such election and shall thereafter contribute, in addition to the 5 percent contribution required by this chapter, 2 percent of the salary paid to him or her by the state. Such amount shall be deducted from such salary by The Council of Superior Court Judges of Georgia and deposited into the retirement fund; and

(2) Any judge so electing shall not be eligible for appointment as senior judge until he is at least 60 years of age, except that he may be appointed senior judge before reaching such age as a result of disability as provided in subsection (c) of Code Section 47-8-40.

(b) Any person who becomes a superior court judge after June 30, 1968, and who is eligible for appointment as senior judge shall have the option provided in subsection (a) of this Code section, which must be exercised, if at all, within 60 days after becoming a superior court judge. All requirements and other provisions of this Code section shall apply to any superior court judge exercising this option.

(c) Upon the death of any superior court judge who has made the election provided for in subsection (a) of this Code section and who was at the time of his death (1) serving as a senior judge, (2) eligible for appointment as a senior judge, or (3) otherwise eligible for appointment as a senior judge except for not having attained age 60, his surviving spouse shall receive for the remainder of her life a monthly benefit equal to the salary as a senior judge which he was drawing or which he was eligible to draw at the time of his death or which he would have been eligible to draw had he lived and been appointed a senior judge, provided that if his surviving spouse is younger than such judge and has not been married to him for at least 20 years, the benefit paid to the surviving spouse shall be converted to the actuarial equivalent on the age attained by the surviving spouse at the time of the judge's death based on actuarial tables adopted by the trustees of the fund as recommended by an actuary selected by such trustees.

(d) No provision of this chapter shall be construed so as to require any superior court judge exercising the option provided by this Code section to be holding office as a superior court judge in order to be eligible for appointment as a senior judge; and, if otherwise qualified in accordance with this chapter, any such judge shall be entitled to be appointed as a senior judge, subject to the requirements of this Code section, whether or not he is holding office at the time of his appointment.

(e) Any superior court judge who has elected to exercise the option provided for in this Code section shall have until July 1, 1970, to rescind such action and to withdraw from the program of benefits provided for in this Code section. If any superior court judge elects to rescind such action, he shall so notify the trustees of the fund, in writing, prior to July 1, 1970. If such action is rescinded, there shall be refunded to any such judge all contributions which he has made toward the program of benefits, less any administrative costs and expenses incurred by the fund and less any costs and expenses for any accrued benefits enjoyed by any such superior court judge during his participation in the program prior to his withdrawal. (Ga. L. 1968, p. 275, § 2; Ga. L. 1970, p. 249, §§ 1-4; Ga. L. 1973, p. 785, § 1; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 92, § 1; Ga. L. 2009, p. 753, § 8/SB 109; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2010, in paragraph (a)(1), inserted "or her" twice in the first sentence and substituted "Council of Superior Court Judges of Georgia" for "commissioner of administrative services" in the last sentence.

The 2010 amendment, effective July 1, 2010, substituted "The Council" for "the Council" in the second sentence of paragraph (a)(1).

Editor's notes. — Ga. L. 2010, p. 1207,

§ 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retire-

ment system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by

the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

OPINIONS OF THE ATTORNEY GENERAL

Widow's benefits not available to senior judges. — General Assembly did not intend to make available to senior judges the “widow's benefits” option available to judges of the superior courts. 1970 Op. Att'y Gen. No. 70-101.

Election of widow's benefits conditioned upon making required payments. — General Assembly intended that the election of widow's benefits pursuant to this statute be conditioned upon the making of such payments as provided in this statute. 1968 Op. Att'y Gen. No. 68-429 (see O.C.G.A. § 47-8-67).

Any superior court judge who so chooses may select widow's benefits to continue to his surviving spouse upon his death, provided the judge pays an additional contribution of two percent of his salary to the fund. 1976 Op. Att'y Gen. No. 76-1.

Exception to rule that only superior court judge eligible for appointment. — Superior court judge must be serving as such in order to apply for an appointment as judge of the superior courts emeritus (now senior judge); however, there are two exceptions to this rule: (1) a judge of the superior courts who is eligible for appointment as a judge of the superior courts emeritus (now senior judge), but who has not yet been so appointed, who is elected or appointed to, or qualifies for, an office of profit or trust under the Constitution of the United States or the Constitution of Georgia, may assume such office of profit or trust, and the judge's right to appointment (the judge's eligibility) shall be suspended during the time the judge holds such office of profit or trust; and (2) any superior court judge who elects to extend retirement benefits to the judge's widow under the terms of this statute, is eligible for an appointment as a judge emeritus (now senior judge), whether or not the judge is

holding office at the time of the judge's appointment by the Governor, assuming, of course, the judge has the requisite service. 1974 Op. Att'y Gen. No. 74-23 (see O.C.G.A. § 47-8-67).

Judge selecting widow's benefits not appointed senior judge until age 60. — No judge of the superior courts selecting widow's benefits may be appointed judge of the superior courts emeritus (now senior judge) until the judge is at least 60 years of age, except for appointments under the disability section of Ga. L. 1945, p. 362 (see O.C.G.A. Ch. 8, T. 47). 1976 Op. Att'y Gen. No. 76-1.

Superior court judge not required to be serving when appointed. — Superior court judge who selects widow's benefits, but who resigns or otherwise leaves office prior to attaining age 60, is entitled, upon the attainment of age 60, to be appointed judge of the superior courts emeritus (now senior judge), assuming the judge otherwise meets the service requirements for that office, notwithstanding the fact that the judge is not serving as a judge when appointed as judge of the superior courts emeritus (now senior judge). 1976 Op. Att'y Gen. No. 76-1.

Benefits provided to spouse of qualified judge dying before age 60. — Statute provides for widow's benefits to the surviving spouse of a judge who dies after obtaining the service requirements for an appointment as emeritus (now senior) judge, but who has not yet reached age 60 at the time of death; this is true whether or not the member is serving as a superior court judge at the time of the member's death. 1976 Op. Att'y Gen. No. 76-1 (see O.C.G.A. § 47-8-67).

Judge may retire before 60 if judge waives widow's benefits. — Judge who has elected the benefits provided by this statute and who has made the required contributions may retire before age 60 if the judge waives both

the widow's benefits and a return of the judge's contributions made under this statute. 1968 Op. Att'y Gen. No. 68-392 (see O.C.G.A. § 47-8-67).

Widow's benefits equal to judge's salary at time of death. — Widow currently receiving widow's benefits is entitled to a benefit equal to the salary of the emeritus (now senior) judge at the time of judge's death; the language of the law is clear and unequivocal

and would allow no increase when the superior court judges' salaries increase. 1973 Op. Att'y Gen. No. 73-75.

Contributions not refunded if spouse predeceases judge. — General Assembly has not provided for a refund of the contributions toward widow's benefits in the event a judge is predeceased by the judge's spouse. 1971 Op. Att'y Gen. No. 71-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 46 Am. Jur. 2d, Judges, § 13. 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1169 et seq., 1175.

47-8-68. Withdrawal of payments to the fund; effect on right to participate in the fund.

Any superior court judge may, after 30 days' written notice to the trustees of this fund, withdraw his total payments, without interest, from the fund; and his right to participate in the benefits under this chapter shall cease, unless the age of such judge is such that he could resume payments for a period of 20 continuous years. (Ga. L. 1945, p. 362, § 14.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1175.

47-8-69. Withdrawal of payments to the fund by superior court judges who have been disqualified or resigned from office; payments upon the death of a superior court judge.

Any superior court judge who resigns or otherwise becomes disqualified to hold such office shall be entitled to withdraw the total amount, without interest, which he has paid to the fund. If any such judge dies, the total amount, without interest, paid by him to the fund shall be paid to his surviving spouse or, if none, to his personal representative. In the case of any such judge who was receiving benefits from this fund at the time of his death and who has not received the total amount, without interest, paid by him to the fund, his surviving spouse or, if none, his personal representative shall receive from the fund the remainder of his payments to the fund. The employee contributions paid by the employer to the fund on behalf of a judge of the superior courts, as provided in subsection (a) of Code Section 47-8-44, after July 1, 1980, shall be considered to be payments made by the judge. (Ga. L. 1945, p. 362, § 15; Ga. L. 1980, p. 925, § 13; Ga. L. 1982, p. 3, § 47.)

OPINIONS OF THE ATTORNEY GENERAL

Disqualified superior court judge may withdraw contributions. — When a former judge of a superior court is disqualified for an appointment to the office of judge of the superior court emeritus (now senior judge), the judge may withdraw the contributions made by the judge to the fund. 1950-51 Op. Att'y Gen. p. 30.

Widow entitled to return of contributions when incomplete service. — Widow of a judge who dies after having served two-thirds or more (but less than all) of the time required for an appointment as judge emeritus (now senior judge) is entitled to a return of the judge's contributions. 1968 Op. Att'y Gen. No. 68-331.

Judge, or widow, entitled to disability benefits. — Superior court judge is entitled to disability benefits although the judge has not attained the required retirement age, provided the judge otherwise meets the requirements of Ga. L. 1945, p. 362 (see O.C.G.A. Ch. 8, T. 47); if such a judge makes the election provided by these provisions, fully complies with the statutory terms, and dies after being entitled to disability benefits, the judge's widow thereby would be entitled to the benefits provided, instead of being forced to accept a return of contributions in accordance with this statute. 1968 Op. Att'y Gen. No. 68-331 (see O.C.G.A. § 47-8-69).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1187 et seq.

ARTICLE 5

MISCELLANEOUS PROVISIONS

47-8-80. Effect of sufficiency of the fund on payment of retirement benefits; order of liability for payment of benefits.

The state shall pay benefits under this chapter to all superior court judges who are eligible for retirement under this chapter without regard to the sufficiency of the fund to pay such benefits. Prior to any withdrawal against general funds of the state for payment of benefits, all interest and moneys earned and accumulated by investment pursuant to Code Section 47-8-4 shall be disbursed as benefits. The employee contributions paid by the employer to the fund on behalf of a judge of the superior courts, as provided in subsection (a) of Code Section 47-8-44, after July 1, 1980, shall be considered to be payments made by the judge. (Ga. L. 1945, p. 362, § 16; Ga. L. 1964, p. 198, § 1; Ga. L. 1980, p. 925, § 13.)

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 47-8-80 is specific direction as to the purpose for which the earnings of the fund may be spent. 1982 Op. Att'y Gen. No. 82-100.

Transfer of earnings to other uses. — Earnings of the Superior Court Judges Retirement Fund and the District Attorneys Retirement Fund of Georgia cannot be

transferred to the 1983 Superior Court Budget Fund for operations because using these funds for any other purpose than to insure payment of benefits would constitute a serious breach of fiduciary duty of the trustees of such funds who are limited to the powers given them by statute. 1982 Op. Att'y Gen. No. 82-100.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1228 et seq. **C.J.S.** — 70 C.J.S., Pensions, § 8.

CHAPTER 9

SUPERIOR COURT JUDGES RETIREMENT SYSTEM; SENIOR JUDGES

Sec.

47-9-1 through 47-9-92 [Repealed].

47-9-1 through 47-9-92.

Reserved. Repealed by Ga. L. 1998, p. 513, § 2, effective July 1, 1998.

Editor's notes. — This chapter consisted of Code Sections 47-9-1 through 47-9-3 (Article 1), 47-9-20 through 47-9-27 (Article 2), 47-9-40, 47-9-41, 47-9-41.1, and 47-9-42 (Article 3), 47-9-60 (Article 4), 47-9-70 through 47-9-77 (Article 5), 47-9-90 through 47-9-92 (Article 6), relating to superior court judges retirement system and senior judges, and was based on Ga. L. 1976, p. 586, §§ 1-21, 39, Ga. L. 1977, p. 607, § 1, Ga. L. 1980, p. 925, §§ 9-11, Ga. L. 1981, p. 407, § 1, Ga. L. 1981, p. 1232, §§ 1,2, Ga. L. 1981, p. 1386, § 3, Ga. L. 1982, p. 3, § 47, Ga. L. 1982, p. 497, §§ 1, 4, Ga. L. 1982, p. 1568, §§ 1-8, Ga. L. 1986, p. 1257, § 1, Ga. L. 1986, p. 1265,

§ 1, Ga. L. 1986, p. 1326, §§ 1, 2, Ga. L. 1988, p. 426, § 1, Ga. L. 1989, p. 80, § 1, Ga. L. 1989, p. 347, §§ 2-4, Ga. L. 1989, p. 832, § 3, Ga. L. 1990, p. 309, § 1, Ga. L. 1990, p. 516, §§ 1, 2, Ga. L. 1990, p. 550, §§ 1, 2, Ga. L. 1991, p. 130, § 1, Ga. L. 1991, p. 300, § 1, Ga. L. 1991, p. 748, § 1, Ga. L. 1992, p. 1303, § 1, Ga. L. 1993, p. 86, § 1, Ga. L. 1993, p. 1402, §§ 18, 19, Ga. L. 1994, p. 92, § 1, Ga. L. 1994, p. 214, § 1, Ga. L. 1994, p. 298, § 1, Ga. L. 1994, p. 722, § 3, Ga. L. 1995, p. 27, § 1, Ga. L. 1995, p. 651, § 5, Ga. L. 1995, p. 787, § 2, Ga. L. 1996, p. 104, §§ 1, 2, Ga. L. 1996, p. 107, § 1, Ga. L. 1996, p. 1245, § 1, Ga. L. 1998, p. 147, § 1.

CHAPTER 10

TRIAL JUDGES AND SOLICITORS RETIREMENT FUND

Sec.

47-10-1 through 47-10-132 [Repealed].

47-10-1 through 47-10-132.

Reserved. Repealed by Ga. L. 1998, p. 513, § 2, effective July 1, 1998.

Editor's notes. — Former Code Section 47-10-61 (Ga. L. 1968, p. 259, § 13), relating to reporting of fees received by solicitors of inferior courts, was repealed by Ga. L. 1990, p. 546, § 3.

Former Code Section 47-10-107 (Ga. L. 1980, p. 1361, § 14 and Ga. L. 1992, p. 1112, § 2), relating to eligibility for election or appointment to state office and practice while receiving retirement benefits, was repealed by Ga. L. 1994, p. 722, § 4.

This chapter consisted of Code Sections 47-10-1 through 47-10-3 (Article 1), 47-10-20 through 47-10-28 (Article 2), 47-10-40, 47-10-41 (Article 3), 47-10-60 through 47-10-66 (Article 4), 47-10-80 through 47-10-82 (Article 5), 47-10-100 through 47-10-108 (Article 6), 47-10-120, 47-10-121 (Article 7), 47-10-130 through 47-10-132 (Article 8), relating to the trial judges and

solicitors retirement fund, and was based on Ga. L. 1968, p. 259, §§ 1-10, 12, 14-29, Ga. L. 1969, p. 929, § 1, Ga. L. 1971, p. 335, § 1, Ga. L. 1972, p. 539, §§ 1-3, Ga. L. 1973, p. 788, § 1, Ga. L. 1976, p. 586, §§ 23-25, 27-29, Ga. L. 1978, p. 2173, §§ 20, 21, Ga. L. 1978, p. 2173, § 21, Ga. L. 1980, p. 1361, §§ 1-6, 8-13, Ga. L. 1982, p. 3, § 47, Ga. L. 1982, p. 961, §§ 1, 2, Ga. L. 1984, p. 1179, §§ 1, 2, Ga. L. 1985, p. 209, § 1, Ga. L. 1987, p. 146, § 1, Ga. L. 1990, p. 546, §§ 1, 2, 4, 5, Ga. L. 1990, p. 550, § 3, Ga. L. 1991, p. 130, § 1, Ga. L. 1992, p. 1112, §§ 1, 3, Ga. L. 1992, p. 1331, § 1, Ga. L. 1992, p. 2102, § 1, Ga. L. 1993, p. 1402, § 13, 14, 18, 19, Ga. L. 1993, p. 803, § 1, Ga. L. 1994, p. 722, § 4, Ga. L. 1995, p. 651, § 6, Ga. L. 1996, p. 377, § 1, Ga. L. 1996, p. 374, § 1, Ga. L. 1997, p. 950, § 1.

ARTICLE 1
GENERAL PROVISIONS

47-11-1. Definitions.

As used in this chapter, the term:

(1) “Board” means the Board of Commissioners of the Judges of the Probate Courts Retirement Fund of Georgia.

(2) “Fund” means the Judges of the Probate Courts Retirement Fund of Georgia.

(3) “Member” means a member of the Judges of the Probate Courts Retirement Fund of Georgia.

ARTICLE 2
CREATION, ADMINISTRATION, AND MANAGEMENT OF THE
ASSETS OF THE FUND

47-11-20. Creation and membership of board of commissioners; appointment and terms; officers and compensation; vacancies.

(a) There is created the Board of Commissioners of the Judges of the Probate Courts Retirement Fund of Georgia. The board shall consist of seven members as follows:

- (1) The Governor or the Governor’s designee;
- (2) An appointee of the Governor who is not the Attorney General;
- (3) Four judges of the probate courts who are members of the fund; and
- (4) One appointee of the Governor who is a member of the fund and a retired judge of the probate court.

(b)(1) The members of the board provided for by paragraph (3) of subsection (a) of this Code section shall be appointed by the Governor. The first such member shall be appointed by the Governor to take office on July 1, 1984, for initial terms as follows: one such member shall be appointed for one year; one such member shall be appointed for a term of two years; and two such members shall be appointed for terms of three years. Thereafter, the Governor shall appoint successors upon the expiration of the respective terms of office for terms of three years. All such members shall serve until their successors are appointed and qualified. Such members shall be eligible for reappointment to successive terms of office as members of the board.

(2) The member of the board provided for by paragraph (4) of subsection (a) of this Code section shall be appointed by the Governor. The first such member shall be appointed by the Governor to take office on October 1, 1991, for an initial term of three years. Thereafter, the Governor shall appoint successors upon the expiration of the respective terms of office for terms of three years. Each such member shall serve until his successor is appointed and qualified. Each such member shall be eligible for reappointment to successive terms of office as a member of the board.

(c) The board shall elect a chairman from among its own membership to serve for a term as chairman established by rules of the board. Four members of the board shall constitute a quorum for the transaction of business. All members of the board shall serve without compensation but may be reimbursed for travel and other expenses incurred by them in carrying out their duties as members of the board.

(d) In the event of a vacancy in the membership of the board appointed by the Governor, the remaining members of the board shall appoint a judge of the probate court who is a member of the fund to fill such vacancy for the unexpired term; provided, however, that with respect to a vacancy in the membership of the board provided for by paragraph (4) of subsection (a) of this Code section, the person appointed to fill such vacancy for the unexpired term shall be a retired judge of the probate court who is a member of the fund.

(e) The Judges of the Probate Courts Group of the County Officers Association of Georgia shall be authorized to submit the names of nominees for each position on the board appointed by the Governor pursuant to this Code section. The Governor may consider the nominees made by said Judges of the Probate Courts Group in making such appointments, but it is specifically provided that all such appointments shall be at the sole discretion of the Governor, and the Governor shall not be required to make any appointments from nominees made by said Judges of the Probate Courts Group. (Ga. L. 1958, p. 185, § 1; Ga. L. 1972, p. 416, § 1; Ga. L. 1972, p. 417, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1984, p. 932, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1991, p. 1105, § 1.)

Editor's notes. — Ga. L. 1984, p. 932, § 2, not codified by the General Assembly, provides: "The positions of membership on the Board of Commissioners of the Judges of the Probate Courts Retirement Fund, except for the Governor and the Attorney General, existing on June 30, 1984, shall stand abolished on July 1, 1984."

Ga. L. 1984, p. 932, § 3, not codified by the General Assembly, provides: "This Act

[which amended this Code section] shall become effective upon its approval by the Governor [March 28, 1984] or upon its otherwise becoming law for the administrative purpose of allowing the Governor to consider appointments pursuant to quoted revised Code Section 47-11-20 of Section 1 of this Act. This Act shall become effective for all purposes on July 1, 1984."

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. 63C Am. Jur. 2d, Public Officers and Employees, §§ 86 et seq., 105 et seq., 137, 241, 271 et seq., 287.

C.J.S. — 48A C.J.S., Judges, §§ 182 et seq., 204 et seq. 67 C.J.S., Officers, §§ 36, 66, 76, 225. 70 C.J.S., Pensions, § 204 et seq.

47-11-21. Creation of office of secretary-treasurer; credit for service rendered; retirement benefits; surety bonds; reports and accounting.

(a)(1) There is created the office of secretary-treasurer of the board. The secretary-treasurer shall be elected and appointed by the board and shall serve at the pleasure of the board. His compensation and duties may be fixed by the board.

(2) The board or the secretary-treasurer with the approval of the board may employ additional personnel to assist the board or secretary-treasurer in carrying out duties provided in this chapter. The compensation and duties of any such personnel shall be fixed by the board.

(b) Notwithstanding any other provisions of this chapter to the contrary, in addition to such salary, the secretary-treasurer shall receive credit for a sum of:

(1) Six hundred dollars per annum for time served after March 21, 1958, until July 1, 1979;

(2) Seven hundred fifty dollars per annum for time served after July 1, 1979, through December 31, 1992; and

(3) One thousand two hundred fifty dollars for time served in any calendar year after 1992 as dues in the retirement system.

(b.1) The secretary-treasurer shall be paid retirement benefits upon retiring as secretary-treasurer as provided in Article 5 of this chapter for a judge of the probate court retiring with the highest benefit allowed by such article and shall be entitled to any retirement option allowed by such article.

(c) The board shall have authority to require the secretary-treasurer to give a good and sufficient surety bond in an amount to be determined by the board. The bond shall be payable to the board and shall be conditioned upon the proper and faithful performance of the duties of the secretary-treasurer. The secretary-treasurer shall be required to make quarterly reports to the board, which reports shall show all receipts and disbursements in such form and in such manner as the board may require. He shall likewise be required quarterly to make a full account of all moneys or property coming into his hands at any time. (Ga. L. 1958, p. 185, §§ 2, 14; Ga. L. 1968, p. 548, § 1; Ga. L. 1972, p. 419, § 1; Ga. L. 1976, p. 754, § 4; Ga. L. 1979, p. 595, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1988, p. 630, § 1; Ga. L. 1990, p. 543, § 1; Ga. L. 1992, p. 1037, § 1; Ga. L. 1996, p. 379, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. 63C Am. Jur. 2d, Public Officers and Employees, § 130. **C.J.S.** — 67 C.J.S., Officers, § 61. 81A C.J.S., States, § 388 et seq.

47-11-22. Powers and duties of the board.

(a) The board is granted the following powers and duties:

(1) To provide for the collection of all moneys provided in this chapter;

(2) To pay the administrative expenses of the board;

(3) To hear and decide all applications for retirement benefits under this chapter;

(4) To make payment of all retirement benefits that may be determined to be due under the terms of this chapter;

(5) To make all necessary rules and regulations, not inconsistent with the laws of the state, for its government and for the government of the employees of the board;

(6) To determine and fix rules of eligibility of persons to receive retirement benefits;

(7) To make refunds and repayments to persons who may be entitled to receive them; and

(8) To keep all records of its meetings.

(b) The board shall also have all powers necessary for the purpose of administering this chapter.

(c)(1) Subject to the terms and limitations of this subsection, the board of commissioners is authorized to adopt from time to time a method or methods of providing for increases in the maximum monthly retirement benefit payable under Article 5 of this chapter for persons theretofore or thereafter retiring under this chapter. Such method shall be based upon:

(A) The recommendation of the actuary of the board of commissioners;

(B) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(C) Such other factors as the board deems relevant.

Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board of commissioners shall determine.

(2) Any provision of paragraph (1) of this subsection to the contrary notwithstanding, no member who receives an annual cost-of-living benefit increase pursuant to subsection (e) of Code Section 47-11-71 shall receive a benefit increase under this subsection greater than 1 percent of the maximum monthly benefit then in effect; provided, however, that no such member shall receive any such increase unless the members not entitled to a benefit increase under subsection (e) of Code Section 47-11-71 receive a like amount plus an additional increase of 2 percent of the maximum benefit then in effect; provided, further, that no benefit increase shall be awarded under this subsection greater than 1.5 percent in any six-month period. (Ga. L. 1958, p. 185, § 4; Ga. L. 1993, p. 801, § 1; Ga. L. 1994, p. 92, § 1; Ga. L. 2010, p. 1207, §§ 64, 66/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “board of commissioners” for “board of trustees” three times in paragraph (c)(1) and substituted “Code Section 47-11-71 receive” for “Code Section 47-11-71 receives” near the end of paragraph (c)(2).
Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retire-

ment system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”
 Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. **C.J.S.** — 70 C.J.S., Pensions, §§ 10, 12 et seq., 15, 17.

47-11-23. Control of funds; special account for deposit and payment; powers regarding investments; power to employ agents as investment advisers.

- (a) The board shall have control of all funds provided for in this chapter, and all funds shall be received and disbursed from a special account to the credit of the board. The expenses of administering this fund and the benefits provided for in this chapter shall be paid from such funds. The board shall have authority to expend the funds in accordance with this chapter.
- (b) The board shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the “Public Retirement Systems

Investment Authority Law.” Subject to such terms, conditions, limitations, and restrictions, the board shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds are invested, including the proceeds of any investments and any money belonging to the fund.

(c) The board is authorized to employ agents, including, but not limited to, banks or trust departments thereof, and to contract with such agents for their services as investment advisers and counselors, making recommendations for investments and making investments if the board so authorizes. (Ga. L. 1958, p. 185, § 3; Ga. L. 1963, p. 265, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1997, p. 966, § 2; Ga. L. 2000, p. 2, § 9; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “advisors” for “advisers” in the middle of subsection (c).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

47-11-24. Power of board to take, hold, and invest any gift, grant, or bequest.

The board may take, by gift, grant, or bequest, any money, real or personal property, or any other thing of value and may hold or invest it for the use and purposes of the fund in accordance with this chapter. (Ga. L. 1958, p. 185, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

47-11-25. Duty of board to keep records.

The board shall keep permanent records of all persons who qualify to participate in the benefits of this chapter, an accurate record of all payments

and disbursements, and a detailed record of all the acts and doings of the board. (Ga. L. 1958, p. 185, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq. **C.J.S.** — 70 C.J.S., Pensions, § 18.

47-11-26. Annual audit; power of state auditor to conduct audit when he or she sees fit or at request of the Governor.

The state auditor is authorized and directed to make an annual audit of the acts and doings of the board and to make a complete report of the same to the General Assembly in such detail as he or she may see fit. The state auditor shall not be required to distribute copies of the report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient. The state auditor shall also have the right to audit the affairs of the board and any of its employees at any time that he or she may see fit or at any time that he or she may be requested to do so by the board or by the Governor. (Ga. L. 1958, p. 185, § 15; Ga. L. 2005, p. 1036, § 33/SB 49.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 77. **C.J.S.** — 81A C.J.S., States, § 388 et seq.

ARTICLE 3

MEMBERSHIP IN AND CONTRIBUTIONS TO THE FUND

47-11-40. Eligibility to participate; credit for service rendered; requirements for judges to participate.

Before any person shall be eligible to participate in the fund he or she must:

(1)(A) Be serving as secretary-treasurer or as an employee of the board; or

(B) Be a duly qualified and commissioned judge of the probate court of a county of the State of Georgia. Any judge of a probate court or employee of the board who desires to participate in the fund shall further comply with applicable provisions in paragraphs (2) through (9) of this Code section;

(2) In the case of judges of the probate courts or employees of the board, make application to the board for membership in the fund on a

form to be furnished by the board for that purpose, giving such information, together with verification and proof thereof, as may be required by the board;

(3)(A) As to judges of the probate courts, make application to the board within a period of 12 months after commencing such service as a judge of the probate court in order to claim and receive credit for services rendered retroactive to the date of the commencement of such service or forever be barred from claiming or receiving any credit for any service rendered prior to the date the application is received in the office of the secretary-treasurer.

(B) As to employees of the board, make application to the board within a period of 12 months after commencing such service as an employee of the board in order to claim and receive credit for services rendered retroactive to the date of the commencement of such service or forever be barred from claiming or receiving any credit for any service rendered prior to the date the application is received in the office of the secretary-treasurer; provided, however, that no employee of the board shall be credited with any service to the board which occurred prior to January 1, 1990; and provided, further, that any person serving as an employee of the board prior to July 1, 1992, shall have until July 1, 1993, to make application with the board and to receive credit for services rendered after January 1, 1990;

(4)(A) Any person who on July 1, 1994, has been eligible for membership in the fund for at least 12 months immediately preceding that date and who has never joined the fund may join or rejoin the fund by complying with all relevant provisions of this Code section; provided, however, that such person must make application to the board of commissioners not later than June 30, 1995, or forever be barred from receiving credit toward retirement for any time served prior to the date any application for membership is received in the office of the secretary-treasurer.

(B) Any person who becomes a member pursuant to subparagraph (A) of this paragraph shall be entitled to obtain service credit for any period during which such person was eligible for membership. Any person who is a member on July 1, 1994, and who has failed to obtain service credit for any period of service as a probate judge may receive service credit for such period for which service credit has not been awarded. Such service credit may be obtained not later than June 30, 1995, by complying with the provisions of paragraphs (5) and (6) of this Code section;

(5) As to judges of the probate courts or employees of the board, file with such application a sworn statement setting out the length of time served as judge of the probate court by the applicant since December 22,

1953, or as an employee of the board since January 1, 1990, and such judge's net earnings for each month during such entire period, which may be arrived at by deducting any and all sums spent for the operation of his or her office if he or she is on a fee basis, but by the gross amount if he or she is on salary; provided, however, that if by either method the income of such judge of the probate court or employee of the board for his or her service as such:

(A) Exceeds \$12,000.00 per annum or an average of more than \$1,000.00 per month for any calendar year prior to 1979, such income shall be deemed to be not more than \$12,000.00 during such year and shall be adjusted to this figure;

(B) Exceeds \$6,000.00 or an average of more than \$1,000.00 per month for the six-month period beginning January 1, 1979, and ending June 30, 1979, such income shall be deemed to be not more than \$6,000.00 during such six-month period and shall be adjusted to this figure;

(C) Exceeds \$7,500.00 or an average of more than \$1,250.00 per month for the six-month period beginning July 1, 1979, and ending December 31, 1979, such income shall be deemed to be not more than \$7,500.00 during such six-month period and shall be adjusted to this figure;

(D) Exceeds \$15,000.00 per annum or an average of more than \$1,250.00 per month for any calendar year after 1979, such income shall be deemed to be not more than \$15,000.00 during such year and shall be adjusted to this figure;

(E) Exceeds \$20,000.00 per annum or an average of more than \$1,666.66 per month for any calendar year after 1990, such income shall be deemed to be not more than \$20,000.00 during such year and shall be adjusted to this figure;

(F) Exceeds \$25,000.00 per annum or an average of more than \$2,083.33 per month for any calendar year after 1992, such income shall be deemed to be not more than \$25,000.00 during such year and shall be adjusted to this figure; or

(G) Exceeds \$30,000.00 per annum or an average of more than \$2,500.00 per month for any calendar year after 1998, such income shall be deemed to be not more than \$30,000.00 during such year and shall be adjusted to this figure; provided, however, that the board of commissioners is authorized to increase such amounts by not more than 3 percent each year, provided that such increase is based upon:

(i) The recommendation of the actuary of the board of commissioners;

(ii) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(iii) Such other factors as the board deems relevant.

(6) As to judges of the probate courts or employees of the board, remit to the board with his or her application the sum of \$105.00 per month as dues, together with interest at a rate of 6 percent per annum from the end of the month in which such dues accrued;

(7) As to judges of the probate courts or employees of the board, file with the board for each month subsequent to admission as a member by the close of business of the twentieth day of each month the sum certain of \$105.00; provided, however, that the requirement for such dues shall cease after the member has paid such dues for a period of 20 years; and

(8) As to judges of the probate courts or employees of the board, all applications for membership, sworn statements of net earnings, remittances of dues, and all other information, facts, or figures in connection with this Code section are subject to being examined, audited, and approved by the board. (Ga. L. 1958, p. 185, § 7; Ga. L. 1959, p. 354, § 1; Ga. L. 1961, p. 57, §§ 1, 2; Ga. L. 1968, p. 548, §§ 3-5; Ga. L. 1976, p. 754, § 2; Ga. L. 1979, p. 596, § 2; Ga. L. 1982, p. 3, § 47; Ga. L. 1990, p. 543, § 2; Ga. L. 1991, p. 130, § 1; Ga. L. 1992, p. 1037, § 2; Ga. L. 1994, p. 342, § 1; Ga. L. 1998, p. 166, §§ 1, 2; Ga. L. 2000, p. 1278, § 1; Ga. L. 2010, p. 1207, § 66/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “board of commissioners” for “board of trustees” three times in this Code section.

Cross references. — Creditable service not allowed for military service from which discharge was other than honorable, § 47-1-11.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia

Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1169, 1171, 1174 et seq., 1252.

C.J.S. — 48A C.J.S., Judges, §§ 182 et seq., 204 et seq. 70 C.J.S., Pensions, § 14.

47-11-41. Service credit not allowed for periods during which contributions not timely paid.

No member shall receive service credit for any month in which an arrearage exists in the payment of dues required by Code Section 47-11-40 or the portion of the collected revenues required to be paid to the fund by Article 4 of this chapter. (Code 1981, § 47-11-41, enacted by Ga. L. 1994, p. 342, § 2; Ga. L. 2000, p. 1278, § 2.)

47-11-42. Suspension of membership.

Any member who has been in arrears in the payment of dues required by Code Section 47-11-40 or the portion of the collected revenues required to be paid to the fund by Article 4 of this chapter for a period of 90 days shall be suspended from membership effective on the ninetieth day of such arrearage. Such member may apply for reinstatement as an active member only during the 30 day period beginning with his or her next full term of office, and such member shall not receive service credit for such period of suspension. (Code 1981, § 47-11-42, enacted by Ga. L. 2000, p. 1278, § 3.)

ARTICLE 4

REVENUES COLLECTED FROM FINES AND FEES

47-11-50. Payment to fund of a portion of fees collected in connection with marriage licenses; duty to record and report collection; interest; delinquent payment; penalties.

(a)(1) The judges of the probate courts shall withhold the following amounts and pay the same to the board by the twentieth day of the month following the month in which such fees were collected, irrespective of whether such collecting judge of the probate court is now or may hereafter be compensated from fees collected or by a salary, or both:

(A) Twenty percent of all fees collected by any and all judges of the probate courts for any service rendered as such in taking applications for marriage licenses, issuing and recording such marriage licenses, and filing such applications and marriage licenses with the Department of Community Health;

(B) Two dollars of each civil filing fee; and

(C) One dollar of the fee paid for each application for a license to carry a pistol or revolver.

(2) It shall be the duty of each judge of the probate court to keep accurate records of all such fees collected, and such records may be audited by the board at any time. The sums remitted to the board under

this Code section shall be used to provide adjustments of the compensation of the several judges of the probate courts by making retirement benefits available to such judges of the probate courts and to pay the costs of administration incurred by the board.

(b) Each judge of a probate court shall submit with the moneys due under subsection (a) of this Code section a sworn statement of the number and nature of transactions for which such moneys are required to be paid and the amount due. Such sworn statement shall be on a form furnished to each judge of a probate court by the board.

(c) Moneys not paid when due shall bear interest at the rate of 7 percent per annum.

(d) Moneys not paid within 60 days of the date they are due shall be delinquent. There shall be imposed on delinquent funds a specific penalty in the amount of 5 percent of the principal amount delinquent per month for each month such moneys remain delinquent; but such specific penalty shall not exceed 25 percent. Such specific penalty shall be in addition to the 7 percent per annum interest charged on overdue moneys. All funds due on or before July 10, 1980, shall be delinquent 60 days after such date.

(e) For failure to file the written report of transactions and amount due when due, there shall be imposed a specific penalty in the amount of \$5.00 for each month said report remains overdue; but such specific penalty shall not exceed \$50.00 for failure to file any one report.

(f) By affirmative vote of all the members, the board, upon the payment of all overdue funds and interest and for good cause shown, may waive the specific penalties provided by subsections (d) and (e) of this Code section. (Ga. L. 1958, p. 185, § 8; Ga. L. 1959, p. 269, § 1; Ga. L. 1959, p. 354, § 2; Ga. L. 1961, p. 57, § 3; Ga. L. 1968, p. 548, § 6; Ga. L. 1980, p. 1346, § 1; Ga. L. 1986, p. 1494, § 1; Ga. L. 2002, p. 1072, § 1; Ga. L. 2003, p. 139, § 1; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “Department of Community Health” for “Department of Human Resources” near the end of subparagraph (a)(1)(A).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retire-

ment system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

JUDICIAL DECISIONS

Constitutionality. — Constitutional infirmities existing in the prior version of this statute are not present in the current statute, and this statute does not violate the equal protection or due process clauses of the United States and Georgia Constitutions. *Holcombe v. Gunby*, 241 Ga. 105, 243 S.E.2d 65 (1978) (see O.C.G.A. § 47-11-50).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

47-11-51. Payment to fund of a portion of criminal and quasi-criminal fines and forfeited bonds; duty to record and report collection; penalties.

(a) In every criminal and quasi-criminal case for violating state statutes or traffic laws, which case is before a judge of the probate court and in which case a fine is collected or a bond is forfeited, a sum based upon the scale set out below for each case shall be collected by the judge or other collecting authority. Such bond or fine shall be construed to include costs. Such sums shall be paid upon the following scale:

For any fine or bond forfeiture of more than \$4.00, but not more than \$25.00	\$ 1.00
For any fine or bond forfeiture of more than \$25.00, but not more than \$50.00	1.50
For any fine or bond forfeiture of more than \$50.00 but not more than \$100.00	2.00
For any fine or bond forfeiture of more than \$100.00	2.50

(b) The sum provided for shall be paid to the board before the payment of any cost or any claims whatsoever against such fine or forfeiture. It is made the duty of the judge of the probate court or other authority collecting the money to keep accurate records of the amount due the board so that the same may be audited or inspected at any time by any representative of the board at the direction of the board. Sums remitted to the board under this Code section shall be used as provided for elsewhere in this chapter.

(c)(1) All moneys required to be paid to the board by this Code section shall be due on the twentieth day of the month after collection. Each judge of the probate court or other collecting authority shall pay such

moneys to the board no later than such due date and shall submit with such moneys a sworn statement of the number and nature of transactions for which such moneys are required to be paid and the amount due. Such sworn statement shall be on a form furnished to each judge of the probate court by the board.

(2) Moneys not paid when due shall bear interest at the rate of 7 percent per annum.

(3) Moneys not paid within 60 days of the date they are due shall be delinquent. There shall be imposed on delinquent funds a specific penalty in the amount of 5 percent of the principal amount delinquent per month for each month such moneys remain delinquent; but such specific penalty shall not exceed 25 percent of the principal amount due. Such specific penalty shall be in addition to the 7 percent per annum interest charged on overdue moneys. All funds due on or before July 10, 1980, shall be delinquent 60 days after such date.

(4) For failure to file the written report of transactions and amount due when due, there shall be imposed a specific penalty in the amount of \$5.00 for each month such report remains overdue; but such specific penalty shall not exceed \$50.00 for failure to file any one report.

(5) By affirmative vote of all the members, the board, upon the payment of all overdue funds and interest and for good cause shown, may waive the specific penalties provided by paragraphs (3) and (4) of this subsection. (Ga. L. 1958, p. 185, § 16; Ga. L. 1959, p. 354, § 6; Ga. L. 1980, p. 1321, § 2; Ga. L. 1986, p. 1494, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Payments to fund not court costs. — General Assembly has drawn a plain distinction between court costs and the payments which must be made into retirement systems;

therefore, payments which are to be made into the Judges of the Probate Retirement Fund should not be treated as part of court costs. 1972 Op. Att'y Gen. No. 72-29.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

ARTICLE 5

RETIREMENT BENEFITS AND REFUNDS OF DUES

47-11-70. Eligibility and application for retirement benefits; early retirement.

(a) In order for a judge of a probate court or an employee of the board to be eligible to receive retirement benefits under this chapter, such judge must have:

(1) Served as a regularly qualified and commissioned judge of a probate court or as an employee of the board for at least four years, if he or she became a member before July 1, 1995, otherwise for eight years, during which time he or she complied with Code Section 47-11-40;

(2) Fully complied with this chapter;

(3) Terminated his or her official capacity as a judge of a probate court or as an employee of the board;

(4) Attained the age of 60 years;

(5) Filed with the board his or her application for such retirement, on a form to be furnished by the board, within a period of 90 days after reaching the age of 60 years or after termination of his or her official capacity as a judge of a probate court or as an employee of the board, whichever may occur last in point of time. If the application is filed after such time, the retirement benefits shall become effective on the first day of the month following the date the application is filed unless the failure to file an application was due to a physical or mental disability, in which event the benefits will be paid as if the application had been filed within such 90 day period; and

(6) Had his or her application for retirement approved by the board.

(b) No judge of the probate court or employee of the board shall be eligible for retirement benefits under this chapter until he has reached the age of 60 years. Any other provisions of this chapter to the contrary notwithstanding, any judge of the probate court or employee of the board who has met all other requirements of this chapter, except that he has not attained 60 years of age, may terminate his service as an employee of the board or as a regularly qualified and commissioned judge of the probate court, may cease payments of any dues into the fund whatsoever, and upon reaching the age of 60 years and filing his application as provided for in paragraph (5) of subsection (a) of this Code section may commence receiving the retirement benefits provided for in this chapter; provided, further, that any judge of the probate court who was a regularly qualified member of the fund and who, prior to July 1, 1976, may have severed his relationship as a regularly qualified and commissioned judge of the probate

court of a county of this state, ceased payments of any dues into the fund whatsoever, but had not reached the retirement age required by law at the time of severance of his relationship as such judge of the probate court, and has not qualified for or commenced drawing retirement benefits as of July 1, 1976, by reason of not having attained said retirement age then required, shall be eligible to commence drawing such retirement benefits due upon reaching the age of 60 years or on July 1, 1976, whichever is later.

(c) Any other provisions of this chapter to the contrary notwithstanding, service as a senior judge of the probate court, as such office is expressly provided for by general law, shall not affect the right of a member of the fund to receive a benefit. (Ga. L. 1958, p. 185, § 13; Ga. L. 1961, p. 57, § 4; Ga. L. 1968, p. 548, § 10; Ga. L. 1972, p. 419, § 3; Ga. L. 1976, p. 754, § 3; Ga. L. 1982, p. 3, § 47; Ga. L. 1982, p. 682, § 2; Ga. L. 1990, p. 312, § 2; Ga. L. 1992, p. 1037, § 3; Ga. L. 1995, p. 907, § 1; Ga. L. 2000, p. 779, § 1; Ga. L. 2003, p. 410, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.

47-11-71. Amount of retirement benefits; optional retirement benefits; manner in which persons not eligible for maximum benefits at retirement may become eligible.

(a)(1) Any judge of the probate court or employee of the board who is approved for retirement benefits as provided in subsection (a) of Code Section 47-11-70 prior to July 1, 1996, shall be paid a monthly sum equal to 5 percent of the judge's or employee's average monthly net earnings, as may be determined from reports of such earnings and subject to the limitations on such earnings as provided for in Code Section 47-11-40, for each year served by the judge or employee up to, but not exceeding, a total of 20 years, except as provided in subsection (c) of this Code section. No time prior to December 22, 1953, or for which dues have not been paid in accordance with Code Section 47-11-40 shall be considered in determining the number of years of service of any such judge of the probate court for purposes of determining retirement pay and no time prior to January 1, 1990, or for which dues have not been paid in accordance with Code Section 47-11-40 shall be considered in determining the number of years of service of any such employee of the board for purposes of determining retirement pay.

(2) Any judge of the probate court or employee of the board who is approved for retirement benefits as provided in subsection (a) of Code Section 47-11-70 on or after July 1, 1996, shall be paid a monthly sum equal to 5 percent of the judge's or employee's final monthly net earnings, as may be determined from reports of such earnings and

subject to the limitations on such earnings as provided for in subparagraph (G) of paragraph (5) of Code Section 47-11-40, for each year served by the judge or employee up to, but not exceeding, a total of 20 years. No time for which dues have not been paid in accordance with Code Section 47-11-40 shall be considered in determining the number of years of service.

(b)(1) In lieu of receiving the retirement benefits provided for in subsection (a) of this Code section, a judge of the probate court or employee of the board may elect in writing, on a form to be provided by the board at the time the judge or employee becomes eligible to receive retirement benefits, to receive a monthly retirement benefit payable up to the date of the death of the designated survivor, which benefit shall be based on the judge's or employee's age at retirement and the age of the judge's or employee's designated survivor at that time and shall be computed so as to be actuarially equivalent to the total retirement payment which would have been paid to the judge or employee under subsection (a) of this Code section. A member who is unmarried at the time of such election may designate a survivor at the time of making such election. If a member is married at the time of such election, his or her spouse shall be the designated survivor unless another person is so designated with the written agreement of the spouse. In any event, the designated survivor shall be a person with whom the member has a familial relationship through blood, marriage, or adoption. Such actuarial equivalent shall be computed on the Group Annuity Table for 1951 using 5 1/2 percent interest. The spouse designated at the time of the judge's or employee's retirement shall be the only spouse who may draw these benefits.

(2) If a member elects the option provided in paragraph (1) of this subsection, then, after the approval of the application for retirement, the following provisions apply:

(A) If the member's designated survivor shall predecease the member, the member may, in writing on forms prescribed by the board and subject to approval by the board, revoke such option and thereafter receive during the member's lifetime a monthly retirement benefit commencing on the date on which the board approves such revocation, but not for any period prior to such approval, equal to the maximum monthly benefit which would have been payable to him had such option not been exercised;

(B) If there is entered a final judgment of complete divorce between the member and the member's spouse who is the designated survivor, the member may, in writing on forms prescribed by the board and subject to approval by the board, revoke such option and thereafter receive during the member's lifetime a monthly retirement benefit commencing on the date on which the board approves such revoca-

tion, but not for any period prior to such approval, equal to the maximum monthly benefit which would have been payable had such option not been exercised; and

(C) If, following the death of the member's spouse or the entry of a final judgment of divorce between the member and the member's spouse who is the designated survivor, the member remarries, the member may, in writing on forms prescribed by the board and subject to approval by the board, elect such option with respect to the member's new spouse. The joint and survivor benefit shall be determined as of the date of the election. No such election shall be made until the expiration of one year after the date of remarriage or until a child of the remarried couple is born, whichever is earlier.

(c) Any provision of this chapter to the contrary notwithstanding, any judge of the probate court, employee of the board, and any secretary-treasurer of the fund who has served for a total of 20 years as judge of the probate court, employee of the board, or secretary-treasurer, or a combination of such service, and who has contributed all dues owed to the fund as provided in this chapter but who is not eligible upon retirement to receive the maximum retirement benefits provided for in this chapter shall be entitled to continue to contribute dues to the fund or, in the case of the secretary-treasurer, to continue to receive credit during such period of time as the judge, employee, or secretary-treasurer shall continue to serve as a judge of the probate court, employee of the board, or secretary-treasurer beyond 20 years of service. The average monthly net earnings of any such judge of the probate court, employee of the board, or secretary-treasurer retiring prior to July 1, 1996, shall be added to the total monthly net earnings of such judge of the probate court, employee of the board, or secretary-treasurer during the 20 year period of service. The sum of these two amounts shall then be divided by 240, and the result of such division shall then be used as the average monthly net earnings upon which retirement benefits shall be calculated; provided, however, such average monthly net earnings shall not exceed the limitations specified in subsection (b) of Code Section 47-11-21 and in Code Section 47-11-40.

(d) The calculation of benefits under this Code section shall apply to persons who were receiving benefits pursuant to the provisions of this chapter prior to July 1, 1988, as well as to persons who become eligible to receive benefits on or after that date. Effective July 1, 1988, the monthly benefit of each person who was receiving a benefit prior to that date shall be increased in the amount necessary to comply with the requirements of this subsection.

(e) Any other provision of law to the contrary notwithstanding, additional retirement benefits shall be paid to each person, including a surviving spouse, who was receiving benefits under this chapter on January 1, 1993, or who became entitled to receive benefits on or after January 1,

1993. Such additional benefits shall be annual cost-of-living benefits equal to the benefit a member would otherwise be entitled to receive as calculated pursuant to subsections (a) through (d) of this Code section and any benefits previously received as authorized by this subsection multiplied by the percentage of any increase in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all items and major groups, United States city average, for the immediately preceding calendar year; provided, however, that such annual percentage increase in benefits shall not exceed 2 percent regardless of the percentage increase in the Consumer Price Index. In any year in which there is no percentage increase in such Consumer Price Index, no additional retirement benefits shall be paid under this subsection. (Ga. L. 1958, p. 185, § 10; Ga. L. 1959, p. 354, § 4; Ga. L. 1968, p. 548, § 8; Ga. L. 1972, p. 421, § 1; Ga. L. 1976, p. 754, §§ 1, 5; Ga. L. 1979, p. 595, §§ 3, 4; Ga. L. 1982, p. 3, § 47; Ga. L. 1986, p. 1249, § 1; Ga. L. 1988, p. 630, § 2; Ga. L. 1992, p. 1037, § 4; Ga. L. 1992, p. 2147, § 1; Ga. L. 1996, p. 114, § 1; Ga. L. 1996, p. 300, § 1; Ga. L. 1998, p. 166, § 3; Ga. L. 2000, p. 1278, § 4; Ga. L. 2006, p. 229, § 1/HB 251.)

47-11-71.1. Spouse's benefits; options; recalculation of benefits upon election to be covered by this Code section.

(a) Upon the death of any member who is then receiving retirement benefits and upon the surviving spouse of such member attaining 60 years of age, said spouse shall be paid spouse's benefits which shall be equal to 50 percent of the retirement benefits then being paid to such member. Such benefits shall be paid for the remainder of the life of such surviving spouse. Upon the death of any member prior to retirement, the surviving spouse of such member may elect:

(1) To withdraw the dues paid into the retirement fund by the deceased member plus interest at the rate specified by law, in which case the spouse shall be deemed to have waived any right to any benefits; or

(2) To leave such dues in the retirement fund and to receive spouse's benefits which shall be payable beginning:

(A) On the date of the member's death, if such member is 60 years of age or older; or

(B) On the date on which the surviving spouse of the deceased member reaches 60 years of age,

whichever event occurs last, and which shall be equal to 50 percent of the retirement benefits which the deceased member was drawing at the time of death or, in the case of a member who dies prior to his sixtieth birthday, which such deceased member would have been entitled to receive upon reaching 60 years of age had he lived and ceased service as

a judge of the probate court or employee of the board on the date of his death.

(b) As used in this Code section, the term “surviving spouse” means the person who was married to the probate judge or employee of the board on the date of the death of the judge or employee.

(c) Any living retired probate judge drawing retirement benefits on November 1, 1982, who had a spouse on the date of the retirement of such judge, which spouse may survive said retired probate judge, shall be eligible to draw the retirement benefits provided for a spouse under this Code section upon electing to do so; provided, however, that no person may draw both the retirement benefits and spouse’s benefits. Spouse’s benefits payable under this Code section shall be in lieu of benefits provided in subsection (b) of Code Section 47-11-71.

(d) Any judges of the probate court or any surviving spouses of judges who are receiving benefits calculated pursuant to subsection (b) of Code Section 47-11-71 are authorized to elect to be covered by the provisions of this Code section and to have the benefits which they are receiving or which they may be entitled to receive recalculated in accordance with the provisions of this Code section. Each such election shall be made in writing by July 1, 1983, on forms to be supplied to each such person by the board of commissioners. No additional contributions or dues shall be required of any person to be covered by the provisions of this Code section. In the event that a person who is receiving benefits calculated under subsection (b) of Code Section 47-11-71 elects to be covered by the provisions of this Code section, such person’s future benefits shall be recalculated in the same manner as if such person had never received benefits under subsection (b) of Code Section 47-11-71; and such recalculated benefits shall be payable beginning on the first day of the month following the month in which the election is made. (Code 1981, § 47-11-71.1, enacted by Ga. L. 1982, p. 2207, § 1; Ga. L. 1985, p. 209, § 1; Ga. L. 1992, p. 1037, § 5; Ga. L. 1993, p. 86, § 1; Ga. L. 1995, p. 908, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1198, 1202 et seq.

47-11-72. Refund of contributions upon termination of office as judge of the probate court and waiver of benefits; interest on dues paid for purposes of computing refunds to deceased members.

(a) Any member of the fund, after ceasing to serve as a judge of the probate court or employee of the board and after waiving any right to retirement benefits in writing on a form to be provided by the board, may apply for and be refunded all dues paid, together with 5 percent simple

interest per annum from the end of the calendar year in which paid to the end of the calendar year next preceding the application for the refund.

(b) Although retirement pay shall be based on Code Section 47-11-71 and nothing in this Code section shall be construed to alter same, at the effective date of retirement simple interest at a rate of 5 percent per annum shall be computed on all dues paid from the end of the calendar year in which paid to the end of the calendar year immediately preceding the date of retirement and shall be added to the total dues paid. After all retirement benefits coming due under subsection (a) or (b) of Code Section 47-11-71, as the case may be, have been paid and if the total thereof shall not be equal to or exceed the above total of dues and interest, then the balance of such principal and interest shall be paid to the estate of the deceased judge of the probate court or employee of the board.

(c) Upon application by the estate of any member of the retirement system who dies prior to retirement and who does not have a surviving spouse who is eligible for benefits under Code Section 47-11-71.1, all dues paid by such deceased member, together with 5 percent simple interest per annum from the end of the calendar year in which paid to the end of the calendar year next preceding the application for the refund, shall be paid to the estate of the deceased judge of the probate court or employee of the board.

(d) No dues may be refunded except in strict compliance with this Code section. (Ga. L. 1958, p. 185, § 11; Ga. L. 1968, p. 548, § 9; Ga. L. 1976, p. 754, § 6; Ga. L. 1979, p. 595, § 5; Ga. L. 1982, p. 2207, §§ 2-4; Ga. L. 1992, p. 1037, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1175, 1187 et seq.

47-11-73. Retirement after disability.

Notwithstanding any other provisions of this chapter to the contrary, a member may retire after completing four years of creditable service if he becomes totally and permanently disabled after commencing service as a probate judge or as an employee of the board. Any such probate judge or employee shall be entitled to receive retirement benefits in the amount that he would receive if his retirement were effective at the time he became disabled. All questions relating to the degree and nature of the total and permanent disability suffered by the probate judge or employee shall be determined by the board. (Code 1981, § 47-11-73, enacted by Ga. L. 1986, p. 1249, § 2; Ga. L. 1992, p. 1037, § 7.)

ARTICLE 6

MISCELLANEOUS PROVISIONS

47-11-90. Effect of insufficiency of funds on payment of retirement benefits; liability of board for such insufficiencies.

If the board determines that the funds derived from the sources provided for in this chapter are not actuarially sufficient at any time to enable the board to pay in full each person determined to be entitled to the benefits provided for, plus all contingent and other liabilities, then a prorated percentage of such payments shall be made to each person entitled thereto until the funds shall be replenished actuarially sufficiently to enable the board to resume such payments in accordance with the terms of this chapter. In no event shall the board or any member thereof be liable to any person for any deficiency in payments made under this Code section. (Ga. L. 1958, p. 185, § 12; Ga. L. 1959, p. 354, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1228 et seq.

C.J.S. — 70 C.J.S., Pensions, § 8.

47-11-91. Exemption of funds from attachment, garnishment, or judgment; assignability.

None of the funds provided for in this chapter shall be subject to attachment, garnishment, or judgment rendered against the person entitled to receive the same. Such funds shall not be assignable. (Ga. L. 1968, p. 548, § 2.)

CHAPTER 12

DISTRICT ATTORNEYS EMERITUS AND THE DISTRICT ATTORNEYS RETIREMENT FUND OF GEORGIA

Article 1

General Provisions

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47-12-1. Definitions.

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Article 5

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47-12-80. Retirement from the office of district attorney and appointment to the office of district attorney emeritus; term of office as district attorney emeritus.
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47-12-83.	Duties of district attorney emeritus.	47-12-87.	Withdrawal of payments for disqualification from office or retirement; payments made upon the death of the district attorney; payments by employer.
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47-12-86.	Withdrawal of payments to the fund; right to participate in the fund after such withdrawal; how payments made on behalf of the district attorney are to be treated.	47-12-100.	Effect of sufficiency of the fund on payments to persons who are eligible for retirement benefits; order of liability for such payments.
		47-12-101.	Exemption of moneys and rights accruing under this chapter from taxation; exemption from levy and sale, attachment, garnishment, and other process; assignability.

ARTICLE 1

GENERAL PROVISIONS

47-12-1. Definitions.

As used in this chapter, the term:

- (1) “Board of trustees” means the Board of Trustees of the District Attorneys Retirement Fund of Georgia.
- (2) “Fund” means the District Attorneys Retirement Fund of Georgia.
- (3) “Member” means a member of the District Attorneys Retirement Fund of Georgia.
- (4) “Salary,” “fees,” and “compensation” includes all emoluments received by a district attorney for his services or resulting from the performance of his duties. (Ga. L. 1958, p. 163, § 4.)

Administrative rules and regulations. — State of Georgia, District Attorneys’ Retirement Fund of Georgia, Chapter 513-11-1.
Rules of General Applicability, Official Compilation of the Rules and Regulations of the

ARTICLE 2

CREATION, ADMINISTRATION, AND MANAGEMENT OF THE
ASSETS OF THE FUND

47-12-20. Creation of the office of district attorney emeritus.

There is created the office of district attorney emeritus. (Ga. L. 1949, p. 780, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 43.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 1 et seq.

47-12-21. Creation of the fund; membership of the board of trustees; payments to the fund.

(a) There is created the District Attorneys Retirement Fund of Georgia.

(b) The board of trustees of the fund shall be the Governor, the state treasurer, and an appointee of the Governor who is not the Attorney General. All payments to this fund shall be made to the board of trustees. (Ga. L. 1949, p. 780, § 7; Ga. L. 1988, p. 426, § 1; Ga. L. 1993, p. 1402, § 15; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal

Services” in the middle of the first sentence of subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Special appropriation is not required in connection with this retirement fund. 1948-49 Op. Att’y Gen. p. 489.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1166 et seq.

C.J.S. — 70 C.J.S., Pensions, §§ 1 et seq., 5 et seq., 10, 12 et seq., 15, 18.

47-12-22. Power of board of trustees to make rules and regulations for the administration of the fund.

The board of trustees is authorized to make such rules and regulations not inconsistent with this chapter for the proper administration of this chapter. (Ga. L. 1949, p. 780, § 14.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. **C.J.S.** — 70 C.J.S., Pensions, § 10.

47-12-23. Power of board of trustees to invest money received under this chapter.

The board of trustees shall have authority to invest any of the money received under this chapter in such manner as funds of the Employees' Retirement System of Georgia are invested and reinvested. (Ga. L. 1949, p. 780, § 15; Ga. L. 1995, p. 651, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

47-12-24. Annual audit of the fund.

The state auditor is authorized to make an annual audit of the fund. (Ga. L. 1949, p. 780, § 16.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 77. **C.J.S.** — 81A C.J.S., States, § 388 et seq.

47-12-25. Administration of the fund.

The trustees shall contract with the Employees' Retirement System of Georgia for the administration of the fund. (Code 1981, § 47-12-25, enacted by Ga. L. 1995, p. 787, § 3.)

ARTICLE 3**MEMBERSHIP IN AND CONTRIBUTIONS TO THE FUND****RESEARCH REFERENCES**

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1175, 1192 et seq.

47-12-40. Eligibility to participate in the fund.

All district attorneys of judicial circuits of this state who qualify under this chapter shall be eligible to participate in the fund. (Ga. L. 1949, p. 780, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1166 et seq.

47-12-41. Payments by district attorneys into the fund.

(a) All district attorneys who qualify under this chapter shall pay into the fund the amount of 5 percent of their state salary for each year; and any district attorney who makes payment to this fund shall be eligible to retire from the office and be eligible to the appointment of district attorney emeritus, at a salary of one-half of what he has previously received as compensation as state salary for the final calendar year of his service as active district attorney of his circuit.

(b) Each district attorney who is now in office and who is otherwise eligible to participate in the benefits provided by this chapter shall make his or her payments to the fund until his or her retirement. Any such district attorney who is eligible to participate in the fund but who has not made the payments set forth in this Code section may pay such amounts into the fund not later than July 1, 1961, with interest at the rate of 5 percent per annum on all amounts due since February 17, 1949, to the date of payment to the Prosecuting Attorneys' Council of the State of Georgia.

(c) Any district attorney who was not in office on February 17, 1949, and who had previously served as a district attorney in this state may qualify and be eligible to participate in the benefits provided by this chapter by paying 5 percent of the existing salary or annual fees of such district attorney, plus interest at 5 percent per annum from February 17, 1949, to the date of payment to the fund, as though he or she had been in office since that date. Such payment shall be made into the fund within six months after reentering upon the duties of district attorney. Such person shall continue to pay into the fund the amount of 5 percent of his or her salary or fees for each year thereafter until he or she is in at least his or her nineteenth year of service, including service prior to and subsequent to February 17, 1949.

(d) District attorneys who qualify under this chapter must make payments to the fund for the entire period set forth in Code Section 47-12-60 and until retirement and must remain in office and render service as an active district attorney for the entire qualifying period or shall have rendered a part of such service as solicitor of a city court from which direct appeals may be taken to the Court of Appeals of Georgia, or otherwise as is provided and set forth in Code Section 47-12-60. (Ga. L. 1949, p. 780, § 9; Ga. L. 1950, p. 228, § 3; Ga. L. 1953, Jan.-Feb. Sess., p. 211, § 1; Ga. L. 1958, p. 163, § 2; Ga. L. 1961, p. 226, § 1; Ga. L. 1965, p. 481, § 1; Ga. L. 1975, p. 1632, § 4; Ga. L. 1993, p. 1402, § 15; Ga. L. 2009, p. 753, § 9/SB 109.)

The 2009 amendment, effective July 1, 2010, in subsection (b), inserted “or her” twice in the first sentence and substituted “Prosecuting Attorneys’ Council of the State

of Georgia” for “Fiscal Division of the Department of Administrative Services” at the beginning of the last sentence.

OPINIONS OF THE ATTORNEY GENERAL

Contributions must be made for creditable service as an assistant district attorney under Ga. L. 1949, p. 780 et seq. (see O.C.G.A. Ch. 12, T. 47), and the amount of the contributions is determined by the provisions of Ga. L. 1949, p. 780 et seq. effective at the time the service as an assistant district attorney was rendered. 1979 Op. Att’y Gen. No. 79-55.

Payment may be made any time before retirement. — There being no statutory limitation on the time for the payment for creditable service, it can be made at any point prior to retirement. 1979 Op. Att’y Gen. No. 79-55.

All service must be paid. — Legislative intent is that all service toward retirement as a district attorney emeritus must be paid. 1972 Op. Att’y Gen. No. 72-25.

Trial Judges and Solicitors Retirement Fund. — All superior court judges and district attorneys, who became such for the first time after June 30, 1968, and are currently serving in such capacities, are required to belong and contribute to the Trial Judges and Solicitors Retirement Fund. 1975 Op. Att’y Gen. No. 75-80.

47-12-42. Spouses’ benefits coverage; payments required for such coverage; effect of spouse’s death, divorce, or remarriage.

(a) Any district attorney who is married shall pay into the fund an amount equal to 2 1/2 percent of his state salary for each year of service, up to a maximum of 19 years, for spouses’ benefits coverage. Such payment shall entitle his surviving spouse to receive from the State of Georgia, for life or until remarriage, a sum equal to 50 percent of the benefits which he was receiving on the date of his death, if retired at such time, or which he would have been eligible to receive had he retired as of that date if he had 19 years of creditable service as of the date of his death. If such district attorney had completed spouses’ contributions for at least ten years of creditable service as a district attorney, but for less than 19 years of creditable service as of the date of his death, his surviving spouse who is eligible for such benefits under this Code section shall be entitled to receive, for life or until remarriage, a sum equal to the amount determined by multiplying one-half of the benefit he would have been entitled to receive upon completion of 19 years of creditable service without change in the salary he was receiving at the time of his death times the fraction which his creditable service bears to 19 years. Those members with more than 19 years of creditable service shall utilize the salary level of the most recent 19 years of service when determining the contribution for spouses’ benefits. Any member who was compensated by the fee system prior to 1969 shall pay the required 2 1/2 percent contribution for spouses’ benefits on the basis of \$9,000.00 per annum, if such fees were less than that amount, or on the basis of the actual fees received, if more than \$9,000.00 per annum, up to a maximum of \$18,000.00 as the basis for such contributions. In addition to such contri-

butions, a member obtaining spouses' benefits shall pay interest on such contributions at the rate of 5 percent compounded annually up to the date of payment of such contributions. All contributions to obtain creditable service for the purpose of spouses' benefits, plus interest thereon, shall be paid by March 24, 1982. A member who is not married shall not be required to make contributions as provided in this Code section for spouses' benefits; but if such member subsequently marries, he shall be required to begin making contributions for spouses' benefits and shall also make such contributions for prior service within two years after becoming married. If the spouse of a member dies or if a member becomes divorced, contributions for spouses' benefits shall cease upon notice to the board of trustees from the member of such death or divorce; but if such member subsequently remarries, he shall notify the board of trustees of such remarriage, and contributions for spouses' benefits shall be reinstated. If a member ceases making contributions for spouses' benefits for any reason, there shall be no return to the member of contributions for such spouses' benefits.

(b) Any other provision of subsection (a) of this Code section or any other provision of this chapter to the contrary notwithstanding, any married district attorney emeritus receiving an emeritus salary on July 1, 1992, who was married for at least one year prior to that date and whose spouse is not otherwise eligible for spouses' benefits shall have the option to reduce his emeritus salary by 10 percent and establish a surviving spouse's benefit equal to one-half of the reduced emeritus salary. Upon the death of a district attorney emeritus who exercised such option, the spouse's benefit provided for in this subsection shall be paid to the surviving spouse in equal monthly installments for life or until the surviving spouse remarries. The option for spouses' benefits for district attorneys emeritus provided for in this subsection must be exercised in writing to the board of trustees by not later than December 31, 1992. (Ga. L. 1980, p. 939, § 1; Ga. L. 1992, p. 2361, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Payment required for spouses' benefits coverage. — Members of District Attorneys Emeritus Fund are required to pay two and one-half percent of their pre-1969 compensation for spouses' benefits coverage, subject to the stated minimum of \$9,000.00 and maximum of \$18,000.00 per year, regardless of whether the pre-1969 compensation was received through local salary or fees. 1980 Op. Att'y Gen. No. 80-109.

47-12-43. Manner of deduction of payments to the fund; penalty for late payments; payments made on behalf of the district attorney.

(a) The payment into the fund either of 5 percent or 7 1/2 percent, as applicable, of the state salary shall be deducted monthly by the Prosecuting Attorneys' Council of the State of Georgia from the salary of each district attorney who is a member of the fund. If any such payments have not been made by February 15 of the succeeding year, the sum due shall incur a

penalty of 6 percent interest per annum computed on the principal amount from February 15 until actually paid. Beginning with the payments to be made covering the calendar year 1964, and for each calendar year thereafter, if the sum due is not paid by February 15 of the succeeding year, such sum due shall be increased by 10 percent plus 6 percent interest per annum, computed on the sum due plus the additional 10 percent, from February 15 until the date of actual payment of the entire amount.

(b) All payments shall be accompanied by an affidavit from the district attorney as to the correctness of the amount of state salary received by him during the period covered by such payments.

(c) Beginning July 1, 1980, the employer shall pay to the fund on each and every payroll period employee contributions on behalf and to the credit of such district attorneys in an amount equal to the amount which would be paid to the annuity savings fund pursuant to Code Section 47-2-54 if the district attorney were a member of the Employees' Retirement System of Georgia. Such district attorneys shall continue to have deducted from their state salaries the additional amount of employee contributions required by this chapter.

(d) The monthly employee contributions made by the employer on behalf of a district attorney as provided in subsection (c) of this Code section shall be used in the computation of the district attorney's state salary for the computation of retirement benefits.

(e) All members shall retain, have, and be subject to all other rights, privileges, obligations, and duties provided for by other provisions of this chapter; and all such other provisions shall remain of full force and effect with respect to any matter not specifically provided for in subsections (c) and (d) and this subsection of this Code section. (Ga. L. 1949, p. 780, § 10; Ga. L. 1958, p. 163, § 3; Ga. L. 1964, p. 758, § 1; Ga. L. 1975, p. 1632, § 5; Ga. L. 1980, p. 939, § 2; Ga. L. 1980, p. 925, § 17; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 86, § 1; Ga. L. 1993, p. 1402, § 19; Ga. L. 2009, p. 753, § 10/SB 109.)

The 2009 amendment, effective July 1, 2010, substituted "Prosecuting Attorneys' Council of the State of Georgia" for "Department of Administrative Services" in the middle of the first sentence of subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent is that all service toward retirement as a district attorney emeritus must be paid. 1972 Op. Att'y Gen. No. 72-25.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

47-12-44. Transfer of membership and contributions to the Employees’ Retirement System of Georgia; payment of additional state contribution upon transfer.

The board of trustees shall transfer to the Employees’ Retirement System of Georgia all contributions made to the fund by a member who transfers to the Employees’ Retirement System of Georgia; and the Prosecuting Attorneys’ Council of the State of Georgia is authorized and directed to pay from the funds appropriated or otherwise available an additional amount equal to the 5 percent contribution of such member plus an additional 20 percent of the contribution, so that the state contribution shall be in accordance with the Employees’ Retirement System of Georgia. (Ga. L. 1956, p. 251, § 1; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 92, § 1; Ga. L. 2009, p. 753, § 11/SB 109.)

The 2009 amendment, effective July 1, 2010, near the middle of this Code section, substituted “Prosecuting Attorneys’ Council of the State of Georgia” for “commissioner of administrative services” and substituted “or otherwise available” for “for the operating expenses of the superior courts of this state”.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

ARTICLE 4

ELIGIBILITY FOR APPOINTMENT AS DISTRICT ATTORNEY EMERITUS

OPINIONS OF THE ATTORNEY GENERAL

Retirement eligibility, regardless of age. — If a district attorney has served 19 years in that capacity, the district attorney is eligible to retire as a district attorney emeritus regardless of the district attorney’s age. 1972 Op. Att’y Gen. No. 72-17.

Service as an assistant district attorney may be credited towards eligibility for appointment as district attorney emeritus as long as the assistant district attorney was performing the duties of a district attorney in the prosecution of cases in both the superior and city court, and such service as an assistant was immediately prior to appointment or election as district attorney; further, that, prior to appointment as a district attorney emeritus, the majority of time must have been as a district attorney. 1972 Op. Att’y Gen. No. 72-25.

Service as a member of the General Assembly, not to exceed three years, is creditable towards appointment under the district attorney emeritus program, provided payment into the retirement fund is properly made. 1972 Op. Att’y Gen. No. 72-25.

Service as city court solicitor is creditable, but the district attorney must make payments into the fund to cover the entire period for which retirement is to be paid; while the statute sets a time limit upon when payments for military service are to be made, it is silent as to the time when service as a city court solicitor must be paid for; consequently, the district attorney may make these payments at the conclusion of the district attorney’s first term of office. 1972 Op. Att’y Gen. No. U72-65.

Interest on payments into fund. — While

the law requires that a district attorney seeking credit toward appointment as district attorney emeritus for service in the military, as judge of a city court, or as salaried attorney for the state or any authority thereof, make payments into the fund with interest, the statute is silent as to interest payments

for service as city court solicitor, assistant district attorney, or assistant to a district attorney; consequently, interest need not be paid when paying for service in the three positions last mentioned. 1972 Op. Att'y Gen. No. U72-95.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, §§ 1, 10 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 50 et seq.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 11 et seq.

47-12-60. Eligibility for retirement from the office of district attorney and appointment to the office of district attorney emeritus.

Except as otherwise provided by general law, any person who is in at least his or her nineteenth year of service as district attorney of this state or as both a solicitor of a city court from which appeals can be taken directly to the Court of Appeals and as district attorney shall be eligible for retirement as district attorney and appointment to the office of district attorney emeritus. In computing years of service under this Code section, a person may be given credit for service as assistant district attorney or as an assistant to the district attorney if in the course of such service he or she performed the duties of the district attorney in the prosecution of cases in both the superior court and the city court, provided that such service was rendered immediately prior to his or her appointment or election as district attorney. (Ga. L. 1949, p. 780, § 2; Ga. L. 1950, p. 177, § 1; Ga. L. 1950, p. 228, § 1; Ga. L. 1951, p. 597, § 1; Ga. L. 1975, p. 1632, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1998, p. 513, § 8.)

47-12-61. Credit for service rendered as a judge of a city court from which appeals can be taken directly to the Court of Appeals; payments required in order to obtain such credit.

In computing years of service as a district attorney for any purpose under this chapter, any time served by a district attorney as a judge of any city court from which appeals can be taken directly to the Court of Appeals of Georgia may be counted in computing the required number of years of service, provided that he pays into the fund the maximum payment provided for by this chapter for each year of service actually served as such a judge, plus interest on each such payment at the rate of 6 percent per annum. Such payment shall be made within six months after March 7, 1966, or within six months after taking office as a district attorney, whichever is later. A district attorney who claims credit for such service shall not be entitled to any retirement benefits under this chapter until he has reached the age of 60

years, provided that this limitation shall not otherwise affect his eligibility to become a district attorney emeritus prior to reaching the age of 60. (Ga. L. 1966, p. 210, § 1; Ga. L. 1982, p. 3, § 47.)

47-12-62. Credit for service rendered as a judge of a county court from which appeals can be taken directly to the Court of Appeals; payments required in order to obtain such credit.

In computing years of service as a district attorney for any purpose under this chapter, any time served by a district attorney as a judge of any county court from which appeals can be taken directly to the Court of Appeals of Georgia may be counted in computing the number of years of service required of any district attorney, provided that he pays into the fund the maximum payment provided for by this chapter for each year of service actually served as such a judge, plus interest on such payment at the rate of 6 percent per annum. Such payment shall be made by not later than January 1, 1975. (Ga. L. 1974, p. 1246, § 1.)

47-12-63. Credit for service rendered as a member of the General Assembly or as an attorney for the state or an authority thereof; payments required in order to obtain such credit.

In computing years of service as a district attorney for any purpose under this chapter, up to three years of service as a member of the General Assembly and any time served as an attorney for the state or any authority thereof on a salary basis may be counted in computing the number of years of service required of a district attorney, provided that he pays into the fund the maximum payment provided for by this chapter for each year of such service as a member of the General Assembly, and any time served as an attorney for the state or any authority thereof on a salary basis, plus interest on such payment at the rate of 6 percent per annum. Such payment shall be made on or before June 30, 1974. In computing such credit, any such district attorney shall be credited for a full year for each year of membership in the General Assembly and a full year for each year he served as an attorney for the state or any authority thereof on a salary basis. (Ga. L. 1972, p. 220, § 1; Ga. L. 1974, p. 1180, § 1.)

47-12-64. Credit for service in the armed forces of the United States during certain national emergencies; payments required in order to obtain such credit.

In computing years of service as a district attorney, credit shall be given for services in the armed forces of the United States occasioned by only one of the following national emergencies: World War I, World War II, or the Korean Conflict. Such credit shall be given upon payment into the fund of the maximum payments provided under Code Section 47-12-41 for each

year or fraction of a year of such service in the armed forces, together with 6 percent simple interest on such amount for each year from the beginning of his service as a district attorney until the date such contributions are paid into the fund. The district attorney shall receive a credit of one year for each year or fraction of year of such service for which contribution into the fund has been made. Such payment shall be made no later than January 1, 1976. (Ga. L. 1958, p. 163, § 2; Ga. L. 1964, p. 366, § 1; Ga. L. 1975, p. 1632, § 4; Ga. L. 1993, p. 86, § 1.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

OPINIONS OF THE ATTORNEY GENERAL

Length of service creditable. — As long as the district attorney's service in the armed forces was occasioned by, or began during, the national emergency of World War II, the entire length of such service may be used in computing credit for service to become a district attorney emeritus. 1972 Op. Att'y Gen. No. 72-14.

Contributions for partial year authorized. — Statute authorizes a member of the District Attorneys Retirement Fund of Georgia

to make contributions into that fund for only a partial year of military service. 1975 Op. Att'y Gen. No. 75-133 (see O.C.G.A. § 47-12-64).

ROTC service not creditable. — Participation in advanced training in the Senior Reserve Officers' Training Corps prior to entry into the active service of the United States Army is not creditable service under the District Attorneys Retirement Fund of Georgia. 1975 Op. Att'y Gen. No. U75-60.

ARTICLE 5

APPOINTMENT AS DISTRICT ATTORNEY EMERITUS; COMPENSATION AND DUTIES

47-12-80. Retirement from the office of district attorney and appointment to the office of district attorney emeritus; term of office as district attorney emeritus.

(a) A person who desires to resign from the office of district attorney and accept appointment as a district attorney emeritus shall so advise the Governor in writing. The Governor shall appoint to such position any district attorney who is eligible under Code Section 47-12-60. Upon such appointment and the issuance of a commission by the Governor, the resignation shall automatically become effective.

(b) All persons appointed as district attorney emeritus shall hold such office for life. (Ga. L. 1949, p. 780, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Appointment effective upon resignation. — Because the word "shall" is mandatory, appointment as district attorney emeritus becomes effective on the date the district attorney resigns. 1965-66 Op. Att'y Gen. No. 66-212.

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Officers and Employees, § 90. 63C Am. Jur. 2d, Prosecuting Attorneys, §§ 1, 10 et seq.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, §§ 5, 17 et seq.

47-12-81. Practice of law during term of office as district attorney emeritus.

District attorneys emeritus are prohibited from practicing law in any cases against the State of Georgia in any of the courts of this state or of the United States. (Ga. L. 1949, p. 780, § 5; Ga. L. 1983, p. 1805, § 1.)

Editor's notes. — Ga. L. 1990, p. 222, repealing this Code section, was not concurrently funded as required by § 47-20-50 and,

therefore, did not become law and became repealed on July 1, 1990. See the state auditor's report at Ga. L. 1990, p. CCCV.

OPINIONS OF THE ATTORNEY GENERAL

Impermissible conflict of interest exists when a district attorney emeritus represents defendants in criminal proceedings in the superior courts of the judicial circuit in which the district attorney emeritus is required by law to advise and consult with the current district attorney, or where the district attorney emeritus's representation of defendants outside one's judicial circuit would create an actual conflict with respect to the district attorney emeritus's duty to

advise the district attorney. 1988 Op. Att'y Gen. No. U88-10.

"Leave of absence" not permitted. — There is no provision for a "leave of absence" from the position of district attorney emeritus, and one wishing to be a district attorney emeritus must take office immediately upon leaving office as district attorney, and must remain in office at all times. 1973 Op. Att'y Gen. No. U73-100.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, §§ 14, 50 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 139.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 15 et seq.

ALR. — Constitutionality and construction of statute prohibiting a prosecuting attorney from engaging in the private practice of law, 6 ALR3d 562.

47-12-82. Salary for district attorneys emeritus; suspension of office upon eligibility for or appointment to an office of profit or trust under the United States Constitution or the Constitution of Georgia.

(a) Any person holding office as a district attorney emeritus on July 1, 1990, or who is appointed to such position on or after such date shall receive from the State of Georgia an annual salary of \$15,000.00 or one-half of the state salary received by such person as a district attorney for the calendar year immediately prior to the person's retirement and resignation as an active district attorney, whichever is the greater amount. Such annual salary shall be paid in equal monthly installments. The annual salary provided for in this subsection shall apply to the calculation of the amount of spouses' benefits under Code Section 47-12-42 as applied to persons

receiving such benefits on July 1, 1990, and as applied to persons who begin receiving such benefits on or after July 1, 1990.

(b) If a person becomes eligible for appointment or is appointed district attorney emeritus and during such period of eligibility or appointment is elected or appointed to and qualifies for an office of profit or trust under the Constitution of the United States or the Constitution of Georgia, the person's right to appointment as district attorney emeritus or to continue to hold such an appointment and to draw the salary fixed for that position shall be suspended during the period of time that the person holds such office. Upon ceasing to hold such office, the person shall then be entitled to appointment or reappointment as district attorney emeritus with all the obligations, rights, and duties of that position. The person's compensation as district attorney emeritus in such event shall be (1) the same amount received by the person as district attorney emeritus at the time of the person's election or appointment and qualification for the office under the Constitution of the United States or the Constitution of Georgia or (2) if the person was eligible but did not then hold an appointment as district attorney emeritus, an annual salary of \$15,000.00 or one-half of the amount of state salary received by such person as district attorney for the calendar year immediately prior to the person's election or appointment to and qualification for such office under the Constitution of the United States or the Constitution of Georgia, whichever is the greater amount.

(c) The purpose of this Code section is to permit any district attorney who may have been appointed district attorney emeritus under this chapter or who may be eligible for appointment as district attorney emeritus to accept some other office of profit or trust under the Constitution of the United States or the Constitution of Georgia without affecting his then existing rights under this chapter, except to suspend the right to hold that office and receive its salary while holding such other office.

(d) During the time that such district attorney is holding such office under the Constitution of the United States or the Constitution of Georgia, he shall not be required to make any payments in and to the District Attorneys Retirement Fund of Georgia.

(e)(1) Except as provided in paragraph (2) of this subsection, effective on July 1, 1990, the monthly salary being paid to each person holding office as a district attorney emeritus on July 1, 1990, shall be increased by \$15.00 for each full year which has elapsed from the date of appointment as district attorney emeritus until July 1, 1990.

(2) A district attorney emeritus whose annual salary on June 30, 1990, is less than the minimum annual salary provided for in subsection (a) of this Code section shall receive either such minimum annual salary or the increase provided for in paragraph (1) of this subsection if such increase would result with an annual salary exceeding such minimum annual

salary. (Ga. L. 1949, p. 780, § 4; Ga. L. 1950, p. 228, § 2; Ga. L. 1958, p. 163, § 3; Ga. L. 1982, p. 3, § 47; Ga. L. 1990, p. 511, §§ 1, 2.)

JUDICIAL DECISIONS

Cited in *Stokes v. Fortson*, 234 F. Supp. 575 (N.D. Ga. 1964).

OPINIONS OF THE ATTORNEY GENERAL

Salary not suspended for director of District Attorney's Association. — Salary of a solicitor general (now district attorney) emeritus shall not be suspended during the period the solicitor general emeritus serves

as executive director of the District Attorney's Association since that position is not an office of profit or trust under the Constitution of the United States or the Constitution of Georgia. 1971 Op. Att'y Gen. No. 71-40.

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Officers and Employees, § 102. 63C Am. Jur. 2d, Prosecuting Attorneys, § 16.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, §§ 17 et seq., 64, 70.

47-12-83. Duties of district attorney emeritus.

It shall be the duty of each district attorney emeritus to consult with and advise the district attorney of his former circuit. (Ga. L. 1949, p. 780, § 6; Ga. L. 1972, p. 362, § 1; Ga. L. 1981, p. 1392, § 2; Ga. L. 1983, p. 1805, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, § 17.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, § 26 et seq.

47-12-84. Disability retirement; determination of disability; continuation of payments to the fund.

Any district attorney who, after 17 years of continuous service and the payment of amounts due under this chapter, becomes unable to perform his official duties because of ill health or other causes may retire under this chapter, provided that he is so certified by the judges of his judicial circuit and two physicians. Any such district attorney shall continue his pro rata payments to the fund for the term as set forth in Code Section 47-12-41. (Ga. L. 1953, Jan.-Feb. Sess., p. 211, § 1.)

47-12-85. Resignation from the office of district attorney emeritus; reappointment to office.

Any other provision of this chapter to the contrary notwithstanding, any person who holds the office of district attorney emeritus shall have the right

to resign as district attorney emeritus and also to be reappointed as district attorney emeritus upon written request to the Governor. No person shall be eligible to be reappointed more than three times. Upon such resignation, any such person shall cease to receive the salary as provided for in this chapter for a district attorney emeritus. Upon reappointment as district attorney emeritus, such person shall receive the salary he was receiving as district attorney emeritus at the time of his resignation. (Ga. L. 1975, p. 1632, § 2; Ga. L. 1979, p. 971, § 1; Ga. L. 1981, p. 1392, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Prosecuting Attorneys, §§ 1, 10, 12. 63C Am. Jur. 2d, Public Officers and Employees, §§ 90, 147.

C.J.S. — 27 C.J.S., District and Prosecuting Attorneys, §§ 5, 17 et seq.

47-12-86. Withdrawal of payments to the fund; right to participate in the fund after such withdrawal; how payments made on behalf of the district attorney are to be treated.

(a) Any district attorney may, after 30 days' written notice to the board of trustees, withdraw his total payments, without interest, from the fund. His right to participate in the benefits under this chapter shall cease unless he otherwise qualifies as an active district attorney during a resumed period of payment.

(b) The employee contributions paid by the employer to the fund on behalf of a district attorney under subsection (c) of Code Section 47-12-43 after July 1, 1980, shall be considered to be payments made by the district attorney. (Ga. L. 1949, p. 780, § 11; Ga. L. 1980, p. 925, § 18.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1175.

47-12-87. Withdrawal of payments for disqualification from office or retirement; payments made upon the death of the district attorney; payments by employer.

(a) Any district attorney who resigns or otherwise becomes disqualified to hold his office shall be entitled to withdraw the total amount, without interest, which such district attorney has paid to the fund. If any district attorney dies, the total amount, without interest, paid by such district attorney to the fund shall be paid to the district attorney's surviving spouse, if any, or to such district attorney's personal representative.

(b) In the case of the death of any district attorney receiving benefits from the fund at the time of death and who is not survived by a spouse or in case of the death of a surviving spouse of a district attorney who is

receiving benefits, where neither the district attorney, the surviving spouse, or both, have received the total amount, without interest, paid by the district attorney to the fund, the district attorney's estate shall receive from the fund the remainder of such payments.

(c) The employee contributions paid by the employer to the fund on behalf of a district attorney under subsection (c) of Code Section 47-12-43 after July 1, 1980, shall be considered to be payments made by the district attorney. (Ga. L. 1949, p. 780, § 12; Ga. L. 1980, p. 925, § 18; Ga. L. 1980, p. 939, § 3; Ga. L. 1981, p. 696, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1187 et seq. C.J.S. — 70 C.J.S., Pensions, § 18.

ARTICLE 6

MISCELLANEOUS PROVISIONS

47-12-100. Effect of sufficiency of the fund on payments to persons who are eligible for retirement benefits; order of liability for such payments.

The state shall pay benefits under this chapter to all district attorneys who are eligible for retirement under this chapter without regard to the sufficiency of the fund to pay such benefits, provided that prior to any withdrawal against general funds of the state for payment of benefits, all interest and moneys earned and accumulated by investment pursuant to Code Section 47-12-23 shall first be disbursed as benefits. (Ga. L. 1949, p. 780, § 13; Ga. L. 1964, p. 214, § 1.)

JUDICIAL DECISIONS

Cited in Stokes v. Fortson, 234 F. Supp. 575 (N.D. Ga. 1964).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 47-12-100 is specific direction as to the purpose for which the earnings of the fund may be spent. 1982 Op. Att'y Gen. No. 82-100.

Transfer of earnings to other uses. — Earnings of the Superior Court Judges Retirement Fund and the District Attorneys Retirement Fund of Georgia cannot be

transferred to the 1983 Superior Court Budget Fund for operations because using these funds for any other purpose than to insure payment of benefits would constitute a serious breach of fiduciary duty of the trustees of such funds who are limited to the powers given the trustees by statute. 1982 Op. Att'y Gen. No. 82-100.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1174 et seq. **C.J.S.** — 70 C.J.S., Pensions, § 8.

47-12-101. Exemption of moneys and rights accruing under this chapter from taxation; exemption from levy and sale, attachment, garnishment, and other process; assignability.

The right to a retirement benefit, district attorney emeritus salary, return of contributions, any optional benefit, or any other right accrued or accruing to any person under this chapter and the moneys in the fund are exempt from any state, county, or municipal tax, except as provided in Code Section 48-7-27; exempt from levy and sale, garnishment, attachment, or any other process whatsoever; and shall not be assignable, except as otherwise specifically provided for in this chapter. (Code 1981, § 47-12-101, enacted by Ga. L. 1983, p. 1805, § 3; Ga. L. 2000, p. 1449, § 6.)

CHAPTER 13

DISTRICT ATTORNEYS' RETIREMENT SYSTEM

Sec.

47-13-1 through 47-13-91 [Repealed].

47-13-1 through 47-13-91.

Reserved. Repealed by Ga. L. 1998, p. 513, § 2, effective July 1, 1998.

Editor's notes. — This chapter consisted of Code Sections 47-13-1, 47-13-2 (Article 1), 47-13-20 through 47-13-30 (Article 2), 47-13-40, 47-13-40.1 (Article 3), 47-13-50 (Article 4), 47-13-60 through 47-13-62 (Article 5), 47-13-70 through 47-13-73 (Article 6), 47-13-90, 47-13-91 (Article 7), relating to district attorneys' retirement system, and was based on Ga. L. 1978, p. 2173, §§ 1-19, Ga. L. 1980, p. 925, §§ 14-16, Ga. L. 1982, p. 3,

§ 47, Ga. L. 1988, p. 426, § 1, Ga. L. 1990, p. 523, § 1, Ga. L. 1990, p. 865, §§ 1-4, Ga. L. 1991, p. 130, § 1, Ga. L. 1992, p. 477, § 1, Ga. L. 1992, p. 1024, § 1, Ga. L. 1992, p. 2355, §§ 1-3, Ga. L. 1993, p. 86, § 1, Ga. L. 1993, p. 800, § 1, Ga. L. 1993, p. 1402, § 18, Ga. L. 1994, p. 335, § 1, Ga. L. 1995, p. 651, § 8, Ga. L. 1995, p. 787, § 4, Ga. L. 1995, p. 1065, § 1, Ga. L. 1996, p. 728, § 1, Ga. L. 1996, p. 733, § 1, Ga. L. 1996, p. 799, § 1.

CHAPTER 14

SUPERIOR COURT CLERKS' RETIREMENT FUND OF
GEORGIA

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ARTICLE 1

GENERAL PROVISIONS

47-14-1. Definitions.

As used in this chapter, the term:

(1) “Board” means the Board of Commissioners of the Superior Court Clerks’ Retirement Fund of Georgia established under Code Section 47-14-20.

(2) “Clerk” means:

(A) A clerk of the superior court; or

(B) A clerk of a state court, where the clerk of such state court is someone other than the clerk of the superior court.

(3) “Deputy clerk” means:

(A) A deputy of a clerk of the superior court, appointed under Code Section 15-6-59; or

(B) A deputy clerk of a state court appointed as provided by law.

(4) “Fund” means the Superior Court Clerks’ Retirement Fund of Georgia.

(5) “Member” means a member of the Superior Court Clerks’ Retirement Fund of Georgia. (Code 1981, § 47-14-1; Ga. L. 2002, p. 470, § 1.)

Editor’s notes. — This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act).

ARTICLE 2

ADMINISTRATION AND MANAGEMENT OF THE ASSETS OF THE
FUND**47-14-20. Creation of the Board of Commissioners of the Superior Court Clerks' Retirement Fund of Georgia; membership of the board; quorum; compensation and expenses.**

(a) There is created the Board of Commissioners of the Superior Court Clerks' Retirement Fund of Georgia. The board shall consist of seven members as follows:

(1) The Governor or the Governor's designee;

(2) An appointee of the Governor who is not the Attorney General; and

(3) Five clerks who shall be members of the fund, provided that at least one but not more than two of such clerks shall be retired clerks receiving retirement benefits pursuant to this chapter.

(b) The members of the board provided for by paragraph (3) of subsection (a) of this Code section shall be appointed by the Governor. The first such members shall be appointed by the Governor to take office on July 1, 1984, for initial terms as follows: Two such members shall be appointed for terms of one year; two such members shall be appointed for terms of two years; and one such member shall be appointed for a term of one year. Thereafter, the Governor shall appoint successors upon the expiration of the respective terms of office for terms of three years. All such members shall serve until their successors are appointed and qualified. Such members shall be eligible for reappointment to successive terms of office as members of the board.

(c) The board shall elect a chairperson from the clerks serving as members of the board who actively hold office as clerks. The term of the chairperson shall be established by rules of the board.

(d) If a vacancy occurs in the membership of the board appointed pursuant to subsection (b) of this Code section, the remaining members of the board shall elect a person meeting the qualifications specified by paragraph (3) of subsection (a) of this Code section to fill such vacancy for the unexpired portion of the term.

(e) Four members of the board shall constitute a quorum for the transaction of business.

(f) All of the members of the board shall serve without pay, but they shall be reimbursed for their actual expenses in attending meetings of the board and performing the duties required of them as members of the board.

(g) The Superior Court Clerks' Group of the County Officers' Association of Georgia shall be authorized to submit the names of nominees for each position on the board appointed by the Governor pursuant to this Code section. The Governor may consider the nominees made by said Superior Court Clerks' Group in making such appointments, but it is specifically provided that all such appointments shall be at the sole discretion of the Governor, and the Governor shall not be required to make any appointments from nominees made by said Superior Court Clerks' Group. (Ga. L. 1952, p. 238, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 330, § 1; Ga. L. 1964, p. 407, § 1; Ga. L. 1980, p. 1547, § 1; Ga. L. 1984, p. 929, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 2002, p. 470, §§ 2, 3.)

Editor's notes. — Ga. L. 1984, p. 929, § 2, not codified by the General Assembly, provides: "The positions of membership on the Board of Commissioners of the Superior Court Clerks' Retirement Fund, except for the Governor and the Attorney General, existing on June 30, 1984, shall stand abolished on July 1, 1984."

Ga. L. 1984, p. 929, § 3, not codified by

the General Assembly, provides: "This Act shall become effective upon its approval by the Governor [March 28, 1984] or upon its otherwise becoming law for the administrative purpose of allowing the Governor to consider appointments pursuant to quoted Code Section 47-14-20 of Section 1 of this Act. This Act shall become effective for all purposes on July 1, 1984."

OPINIONS OF THE ATTORNEY GENERAL

Fund not covered by Administrative Procedure Act. — Because of the specific exclusion relating to rules dealing with retirement, the rules and regulations of the

Superior Court Clerks' Retirement Fund do not come under the provisions of the Georgia Administrative Procedure Act. 1963-65 Op. Att'y Gen. p. 661.

47-14-21. Creation of office of secretary-treasurer; selection, compensation, and powers and duties; periodic reports of moneys in hand, receipts, and expenditures; performance bond.

(a) There is created the office of secretary-treasurer of the Superior Court Clerks' Retirement Fund of Georgia. The secretary-treasurer shall be selected and appointed by the board and shall serve at the pleasure of the board. His compensation shall be fixed by the board. He shall have such power and authority as may be given him by the board and shall perform such duties and services as the board may desire.

(b) The secretary-treasurer shall make quarterly reports to the board showing the total amount of money in his hands at the time such report is made and also showing a full accounting of receipts and expenditures since his last quarterly report.

(c) The secretary-treasurer shall give a good and sufficient surety bond in an amount to be determined by the board. The bond shall be made payable to the board and shall be contingent upon the proper and faithful performance of his duties as secretary-treasurer. (Ga. L. 1952, p. 238, §§ 2, 12; Ga. L. 1971, p. 321, § 1.)

47-14-22. Powers and duties of the board generally.

(a) The board shall have the power and duty to:

(1) Provide for the collection of all moneys in connection with this chapter;

(2) Provide for the payment of all administrative expenses;

(3) Hear and decide all applications for retirement benefits under this chapter;

(4) Provide for the payment of all retirement benefits that may be determined to be due under the rules and regulations as adopted by the board;

(5) Make all necessary rules and regulations not inconsistent with the laws of this state for its government and for the government of the employees who are employed to administer this chapter;

(6) Determine and fix rules of eligibility of persons to receive retirement benefits under this chapter;

(7) Make provisions for refunds and repayments to persons who may be entitled to receive them;

(8) Keep records of all its meetings;

(9)(A) Subject to the terms and limitations of this Code section, the board is authorized to adopt from time to time a method or methods of providing for increases in the maximum monthly retirement benefit payable under Article 5 of this chapter for persons retiring under this chapter. Such method shall be based upon:

(i) The recommendation of the actuary of the board;

(ii) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(iii) Such other factors as the board deems relevant. Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board shall determine.

(B) No increase granted pursuant to subparagraph (A) of this paragraph shall exceed 3 percent of the maximum monthly retirement benefit then in effect. Thereafter, such increases may become effective as of January 1 and July 1 of each year; provided, however, that no such increase shall exceed 1 1/2 percent of the maximum monthly retirement benefit then in effect.

(C) No increase pursuant to subparagraph (A) of this paragraph shall become effective within six months of the effective date of any increase in the maximum retirement benefit granted by the General Assembly pursuant to Code Section 47-14-70; and

(10)(A) Subject to the terms and limitations of this Code section, the board is authorized to provide for a one-time increase in the maximum monthly retirement benefit payable under Article 5 of this chapter for persons retired or retiring under this chapter. Such increase shall be based upon:

(i) The recommendation of the actuary of the board;

(ii) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(iii) Such other factors as the board deems relevant.

Such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board shall determine.

(B) No increase granted pursuant to subparagraph (A) of this paragraph shall exceed 4 percent of the maximum monthly retirement benefit then in effect. Such increase shall be in addition to any other increase in such benefit provided by this chapter.

(b) The board shall have all other powers necessary for the proper administration of this chapter. (Ga. L. 1952, p. 238, § 4; Ga. L. 1998, p. 158, § 1; Ga. L. 2002, p. 1313, § 1; Ga. L. 2007, p. 62, § 1/SB 104.)

47-14-23. Special account for funds; investment powers of board.

(a) The board shall have control of the funds provided for in this chapter; and all funds received by the board shall be deposited in a special account to the credit of the Superior Court Clerks' Retirement Fund of Georgia. Benefits under this chapter and all administrative expenses shall be paid from such funds. The board shall have authority to expend the funds in accordance with this chapter.

(b) The board of commissioners shall have full power to invest and reinvest the assets of the fund and to purchase, hold, sell, assign, transfer, and dispose of any securities and other investments in which assets of the fund have been invested, any proceeds of any investments, and any money belonging to the fund; provided, however, that such power shall be subject to all terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the "Public Retirement Systems Investment Authority Law."

(c) The board is authorized to employ agents, including, but not limited to, banks or trust departments thereof, and to enter into contracts with such agents for their services as investment advisers and counselors, in making recommendations for investments, and in making investments if the board so authorizes. (Ga. L. 1952, p. 238, § 3; Ga. L. 1963, p. 263, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1998, p. 158, § 2; Ga. L. 2000, p. 2, § 10; Ga. L. 2010, p. 1207, §§ 65, 66/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “board of commissioners” for “board of trustees” near the beginning of subsection (b) and substituted “advisers” for “advisors” in the middle of subsection (c).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny,

abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-14-24. Gifts, grants, and bequests.

The board, by gift, grant, or bequest, may take any money, real or personal property, or any other thing of value and may hold or invest the same for the uses and purposes of the fund in accordance with this chapter. (Ga. L. 1952, p. 238, § 6.)

47-14-25. Duty of board to keep records; presentation of annual financial statement to Clerks’ Group of the County Officers’ Association of Georgia.

The board shall keep permanent records of retirement benefits granted and shall keep proper records and books concerning the operation of the board. Each year the board shall present an annual financial statement of the fund at the annual meeting of the Clerks’ Group of the County Officers’ Association of Georgia. (Ga. L. 1952, p. 238, § 5.)

47-14-26. Duty of the state auditor to make an annual audit and report; audit upon request of the board or the Governor; contents of annual report.

The state auditor is authorized and directed to make an annual audit of the acts and doings of the board and to make a complete report of that audit to the General Assembly. The state auditor shall not be required to distribute copies of the report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient. The report shall

disclose all moneys received by the board and all its expenditures, including administrative expenses and payments made as annuities and benefits. The state auditor shall also make an audit of the affairs of the board at any time when requested by a majority of the board or the Governor. (Ga. L. 1952, p. 238, § 15; Ga. L. 2005, p. 1036, § 34/SB 49.)

ARTICLE 3

MEMBERSHIP IN AND CONTRIBUTIONS TO THE FUND

47-14-40. Application for membership in the fund; payments by members into the fund; penalties for late payment; creditable service impacted by late payments.

(a) Any clerk, in order to participate in the benefits provided for in this chapter, shall make application to the Superior Court Clerks' Retirement Fund of Georgia upon forms to be furnished for that purpose by the board, giving such information as may be required by the board. He or she shall pay \$50.00 per month into the fund; provided, however, that members who first or again become members on or after September 1, 2009, shall pay \$100.00 per month into the fund. All clerks who made application and are accepted for membership in the fund shall remit to the board, not later than the tenth day of each subsequent month, the amount due under this subsection.

(b) If any payment required to be made to the fund by a clerk remains unpaid 60 days from the date such payment is due, there shall also be due a late charge, which late charge shall be interest from the due date computed at 10 percent per annum or the sum of \$5.00, whichever is the greater amount. In the event of such delinquency, in order to be eligible to receive any benefits provided by this chapter, a clerk shall remit the late charge with such delinquent payment.

(c) No creditable service shall be granted for any month for which dues are in arrears on December 31, 2008, but payment shall be deemed timely and creditable if such dues and late charges are received by the board on or before the tenth day of the succeeding month. Thereafter, no creditable service shall be granted for any month for which dues are in arrears on the last day of the calendar year during which the dues were due, but payment shall be deemed timely and creditable if such dues and late charges are received by the board on or before the tenth day of the succeeding month following the last day of the preceding calendar year. (Ga. L. 1952, p. 238, § 7; Ga. L. 1953, Nov.-Dec. Sess., p. 332, § 2; Ga. L. 1964, p. 202, § 1; Ga. L. 1966, p. 222, § 1; Ga. L. 1981, p. 857, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1982, p. 1273, §§ 1, 3; Ga. L. 1998, p. 158, § 3; Ga. L. 2008, p. 722, § 1/SB 460; Ga. L. 2009, p. 824, § 1/HB 487.)

The 2008 amendment, effective July 1, 2008, in subsection (b), in the first sentence, substituted “payment required” for “payments required” near the beginning, and substituted “remains unpaid 60 days from the date such payment is due” for “shall remain unpaid 90 days from the date such payment shall be due” near the middle, and, in the second sentence, substituted “shall

remit the late charge with such delinquent payment” for “must remit with such delinquent payments the late charges as provided for herein” at the end; and added subsection (c).

The 2009 amendment, effective May 5, 2009, added the proviso at the end of the second sentence of subsection (a).

JUDICIAL DECISIONS

Not entitled to credit. — Clerk, who had withdrawn from a superior court retirement fund and obtained a refund of all of the clerk’s contributions, was not entitled to receive retirement credit for the almost 20 years the clerk had served as a county clerk after the clerk reapplied for membership in

the retirement fund, because legislation was enacted that plainly prohibited obtaining any credit beyond the prior six months from the date of the application for membership. *Alston v. Superior Court Clerks’ Ret. Fund*, 271 Ga. App. 143, 608 S.E.2d 734 (2004).

ARTICLE 4

REVENUES COLLECTED FROM FINES, BONDS, AND FEES

47-14-50. “Collecting authority” defined; payments to fund from fines and bonds collected in criminal and quasi-criminal cases; duty of collecting authority to record and remit; penalty for late payment.

(a) As used in this Code section, the term “collecting authority” means, without limitation, any county or state officer, including any judicial officer or employee, or any other person representing or acting on behalf of any court, the state, or a political subdivision of the state who in his or her capacity collects or receives fines or forfeitures as provided in this Code section.

(b) The sum of \$2.00 shall be paid to the board from each fine collected and each bond forfeited and collected in any criminal or quasi-criminal case for violation of state law if the case is tried in any court of this state in which the clerk of such court is eligible for membership in this retirement fund. The collecting authority shall pay such amounts to the board each month or at such other times as the board may provide. Such amounts shall be due on the first day of the month following the month in which they were collected but shall be deemed timely if received by the board on or before the fifteenth day of the month; provided, however, that for purposes of calculating late payment penalties, the due date shall be the first day of the month. It shall be the duty of the collecting authority to keep accurate records of the amounts due the board. Such records may be audited by the board at any time. The sums remitted to the board under this Code section shall be used for the purposes provided for in this chapter.

(c) If the clerk or other collecting authority whose duty it is to collect and remit moneys to the fund under subsection (b) of this Code section shall fail to remit such moneys within 60 days of the date on which such remittal is due, such moneys shall be delinquent; and there shall be imposed, in addition to the principal amount due, a specific penalty in the amount of 5 percent of the principal amount per month for each month during which the funds continue to be delinquent, provided that such penalty shall not exceed a total of 25 percent of the principal due. In addition to such penalty, interest shall be charged on the delinquent moneys at the rate of 6 percent per annum from the date such moneys became delinquent until they are paid. All moneys which have not been paid to the fund within 60 days of the due date shall be delinquent. By affirmative vote of all members, the board, upon the payment of the delinquent moneys together with interest and for good cause shown, may waive the specific penalty otherwise charged under this subsection. (Ga. L. 1952, p. 238, § 8; Ga. L. 1962, p. 67, § 1; Ga. L. 1966, p. 222, § 2; Ga. L. 1969, p. 688, § 1; Ga. L. 1970, p. 177, § 1; Ga. L. 1976, p. 729, § 1; Ga. L. 1992, p. 2348, § 1; Ga. L. 2002, p. 470, § 4; Ga. L. 2008, p. 722, § 2/SB 460; Ga. L. 2009, p. 824, § 2/HB 487.)

The 2008 amendment, effective July 1, 2008, added subsection (a); redesignated former subsections (a) and (b) as present subsections (b) and (c), respectively; in subsection (b), substituted “month” for “quarter” in the second sentence, and added the third sentence; and, in subsection (c), substituted “subsection (b)” for “subsection

(a)” near the beginning of the first sentence, and substituted “All moneys” for “After April 1, 1966, all moneys” at the beginning of the third sentence.

The 2009 amendment, effective May 5, 2009, substituted “\$2.00” for “\$1.75” near the beginning of the first sentence of subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Provisions of this statute are mandatory and the appropriate amount must be paid regardless of whether the clerk is a member of the retirement fund. 1952-53 Op. Att’y Gen. p. 324 (see O.C.G.A. § 47-14-50).

Contributions to fund are not “costs.” — Contributions to the Superior Court Clerks’ Retirement Fund and the Sheriffs’ Retirement Fund are not embraced within the word “costs” as that term is used in the

setting of criminal proceedings; therefore, such contributions are statutorily created charges against the fine itself. 1972 Op. Att’y Gen. No. 72-29.

Records of amounts due to fund. — Records of amounts due the Superior Court Clerks’ Retirement Fund must be kept by the collecting authority, i.e., the court. This duty will usually be assigned to the clerk of the court. 1970 Op. Att’y Gen. No. U70-85.

JUDICIAL DECISIONS

Contributions made with fines and fees were county funds. — Court fines and forfeitures were county funds and, thus, the payment of those monies into a court clerk’s state retirement plan were contributions made with county funds; the county’s determination to exclude the clerk from the county’s pension plan, based on the county’s

decision that it should contribute to each constitutional officer’s retirement plan only once, did not violate equal protection since it was based on a rational distinction between the various constitutional officers, and furthered the legitimate governmental purpose of equalizing the county’s pension contributions and fostering financial responsi-

bility in the funding of the county's retirement plans. *Comm'rs v. Meador*, 280 Ga. 241, 626 S.E.2d 79 (2006).

47-14-51. Payments to the fund from fees collected in certain civil actions and for recording of instruments pertaining to real estate; records; audit of records; use of sums remitted; failure of clerk to remit.

(a) In addition to all other legal costs, the sum of \$1.00 shall be charged and collected in each civil suit, action, case, or proceeding filed in the superior courts or in any other court of this state in which a clerk eligible for membership in this retirement fund is clerk, including, without limiting the generality of the foregoing, all adoptions, charters, certiorari, applications by a personal representative for leave to sell or reinvest, trade name registrations, applications for change of name, and all other proceedings of a civil nature, filed in the superior courts or other such courts.

(b) In addition to all other legal costs, the sum of 50¢ shall be charged and collected in addition to any other fees or costs for the processing of all instruments pertaining to real estate filed in the superior courts.

(c) The clerks shall collect the fees provided for in subsections (a) and (b) of this Code section, and the fees so collected shall be remitted to the board on a monthly basis or at such time as the board may provide. Such amounts shall be due on the first day of the month following the month in which they were collected but shall be deemed timely if received by the board on or before the fifteenth day of the month; provided, however, that for purposes of calculating late payment penalties, the due date shall be the first day of the month. It shall be the duty of the clerks to keep accurate records of the amounts due the board under this Code section, and such records may be audited by the board at any time. The sums remitted to the board under this Code section shall be used for the purposes provided in this chapter.

(d) If the clerk or other authority whose duty it is to collect and remit moneys to the fund under subsection (a) of this Code section fails to remit such moneys within 60 days of the date on which such remittal is due, such moneys shall be delinquent; and there shall be imposed, in addition to the principal amount due, a specific penalty in the amount of 5 percent of the principal amount per month for each month during which the funds continue to be delinquent, provided that such penalty shall not exceed a total of 25 percent of the principal due. In addition to such penalty, interest shall be charged on the delinquent moneys at the rate of 6 percent per annum from the date such moneys became delinquent until they are paid. All moneys which have not been paid to the fund within 60 days of the due date shall be delinquent. By affirmative vote of all members, the board, upon the payment of the delinquent moneys together with interest and for good cause shown, may waive the specific penalty otherwise charged under this subsection.

(e) The sum of \$1.00 shall be paid out of the fees charged and collected pursuant to Title 15 in each civil suit, action, case, or proceeding filed in the superior courts or in any other court of this state in which a clerk eligible for membership in this retirement fund is clerk and shall be remitted to the board as provided in subsection (c) of this Code section. Such fees shall include, without limiting the generality of the foregoing, all adoptions, charters, certiorari, applications by a personal representative for leave to sell or reinvest, trade name registrations, applications for change of name, and all other proceedings of a civil nature filed in the superior courts or other such courts. (Ga. L. 1977, p. 1098, §§ 1, 2; Ga. L. 1983, p. 555, § 1; Ga. L. 2002, p. 470, § 5; Ga. L. 2008, p. 722, § 3/SB 460; Ga. L. 2009, p. 824, § 3/HB 487.)

The 2008 amendment, effective July 1, 2008, in subsection (c), in the first sentence, inserted a comma following “Code section” and substituted “monthly” for “quarterly”, added the second sentence, and inserted a

comma after “Code section” in the third sentence; and added subsection (d).

The 2009 amendment, effective May 5, 2009, added subsection (e).

JUDICIAL DECISIONS

Cited in *Orr v. Culpepper*, 161 Ga. App. 801, 288 S.E.2d 898 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Time for charging additional sum. — Additional sum of \$1.00 authorized by this statute to be paid to the clerks of the superior courts should be charged and collected upon the filing of articles of amendment, articles of merger, and articles of dissolution. 1978 Op. Att’y Gen. No. 78-63 (see O.C.G.A. § 47-14-51).

When clerk of both superior and magistrate courts may collect fee. — Superior court clerk is authorized to collect a \$1.00 fee on each civil action filed in magistrate court for the benefit of the superior court clerks’ retirement fund when that superior court clerk also holds the position of clerk of magistrate court. 1983 Op. Att’y Gen. No. U83-49.

Instruments pertaining to real estate. — For a list of instruments which, along with

their cancellation, pertain to real estate within the meaning of subsection (b) of O.C.G.A. § 47-14-51, see 1983 Op. Att’y Gen. No. U83-60.

Cancellation of real estate instrument subject to fee. — If an original instrument pertains to real estate within the meaning of subsection (b) of O.C.G.A. § 47-14-51, the cancellation authorization also so pertains to real estate. 1983 Op. Att’y Gen. No. U83-60.

Petitions filed under Family Violence Act. — One dollar fees for the clerks’ and sheriffs’ retirement funds should be charged in addition to the filing fees for a petition filed under the Family Violence Act (O.C.G.A. § 19-13-1 et seq.). 1988 Op. Att’y Gen. No. U88-11.

RESEARCH REFERENCES

ALR. — Federal government or agencies of federal government as subject to payment of tax or fee imposed upon, or for, recording or filing instrument, 124 ALR 1267.

ARTICLE 5

RETIREMENT BENEFITS, DISABILITY BENEFITS,
AND SPOUSES' BENEFITS**47-14-70. Eligibility for retirement benefits; additional or partial retirement benefits; election to provide both retirement and survivors benefits.**

(a) A member with at least 20 years of service shall receive retirement benefits of \$1,700.00 per month upon retirement, provided that at least 12 years of such service shall have been served as a clerk, and the member must have served continuously as a clerk for the four years immediately preceding the member's retirement. Subject to the restrictions set out in this subsection, in computing such service, a member also may include service as a deputy clerk of the superior court and not more than four years of service as a member of the armed forces of the United States on active duty during any period of time in which the United States was engaged in an armed conflict, regardless of whether a state of war had been declared by Congress, provided that no service as a member of the armed forces of the United States shall be deemed as service for purposes of obtaining retirement benefits under this chapter if such service has or will be used in the determination of the member's eligibility for retirement benefits or allowances from any other state or federal retirement program, excluding social security. A clerk of the superior court may not include service for eligibility purposes for years in which the clerk has not completed the training requirements set out in paragraph (1) of subsection (c) of Code Section 15-6-50. No member who is subject to the provisions of Code Section 15-6-50 shall be entitled to include, for purposes of eligibility to receive a benefit under this chapter, service during which he or she was not in compliance with the training requirements of subsection (c) of such Code section.

(b) If a member is eligible to retire under subsection (a) of this Code section but does not retire and continues to serve as clerk, he or she shall be entitled to receive, upon retirement, the amount to which he or she would have been entitled under subsection (a) of this Code section; and, in addition, for each year of service beyond the required 20 years, he or she shall receive an additional 5 percent of the amount he or she would be entitled to under subsection (a) of this Code section.

(c) In lieu of the retirement benefits provided in subsections (a) and (b) of this Code section, a member, upon retirement, may elect to receive 90 percent of the benefits the member is entitled to receive under subsections (a) and (b) of this Code section during the remainder of the member's life; and, after the member's death, the member's surviving spouse shall receive a monthly sum during the lifetime of the surviving spouse equal to 50

percent of the amount which the member would have received had the member elected the full benefits provided under subsections (a) and (b) of this Code section. In order to be eligible for such benefits, the surviving spouse must have been married to the member for at least six years immediately preceding the member's death. Such benefits shall not commence until after the surviving spouse reaches 55 years of age.

(d) A member with at least 16 years of service either as a clerk or deputy clerk shall receive retirement benefits of \$1,360.00 per month upon retirement, provided that at least eight years of such service shall have been served as a clerk, and the member must have served continuously as a clerk for the four years immediately preceding the member's retirement. No other type of service shall be counted toward such retirement benefits.

(e) A member with at least 12 years of service either as a clerk or deputy clerk shall receive retirement benefits of \$1,020.00 per month upon retirement, provided that at least eight years of such service shall have been served as a clerk, and the member must have served continuously as a clerk for the four years immediately preceding the member's retirement. No other type of service shall be counted toward such retirement benefits.

(f) Any other provisions of this chapter to the contrary notwithstanding, all members who retire on or after April 1, 1976, for whatever reason and who otherwise meet the requirements for retirement benefits under either subsection (d) or (e) of this Code section shall be entitled to an additional benefit based on service in excess of the minimum required for such retirement benefits, provided that such service is of the kind for which credit toward retirement benefits would be given under subsection (d) or (e) of this Code section. The amount of the retirement benefit shall be based on the ratio that the total number of years served bears to the minimum number of years required for benefits under subsection (d) or (e) of this Code section, as appropriate. For example, the following table is illustrative of the additional benefits computation under this Code section:

<u>Years of Service at Retirement</u>	<u>Benefits Received</u>
13	Thirteen-twelfths of the benefits provided in subsection (e) of this Code section
14	Fourteen-twelfths of the benefits provided in subsection (e) of this Code section
15	Fifteen-twelfths of the benefits provided in subsection (e) of this Code section

- | | |
|----|--|
| 17 | Seventeen-sixteenths of the benefits provided in subsection (d) of this Code section |
| 18 | Eighteen-sixteenths of the benefits provided in subsection (d) of this Code section |
| 19 | Nineteen-sixteenths of the benefits provided in subsection (d) of this Code section |

(g) No person shall receive credit toward the retirement benefits set forth in subsections (a) and (b) of this Code section for any service performed after February 15, 1952, unless payment for the period covered by such service has been made to the board. No person shall be eligible for the benefits provided in this Code section unless his or her official duties have terminated and he or she files an application for benefits within 90 days, or as soon thereafter as possible, from the termination of his or her official duties. (Ga. L. 1952, p. 230, § 9; Ga. L. 1964, p. 202, §§ 2, 3; Ga. L. 1968, p. 420, § 1; Ga. L. 1971, p. 228, §§ 1, 2; Ga. L. 1972, p. 352, § 2; Ga. L. 1974, p. 1183, § 1; Ga. L. 1976, p. 729, §§ 2, 4, 5, 8; Ga. L. 1978, p. 2069, §§ 1, 3, 4; Ga. L. 1980, p. 1547, § 2; Ga. L. 1981, p. 857, §§ 2, 4, 5; Ga. L. 1981, p. 921, § 4; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 555, § 2; Ga. L. 1986, p. 30, § 1; Ga. L. 1986, p. 1252, § 1; Ga. L. 1988, p. 626, § 1; Ga. L. 1990, p. 1270, § 1; Ga. L. 1994, p. 1811, § 1; Ga. L. 1998, p. 158, § 4; Ga. L. 2002, p. 470, § 6.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

OPINIONS OF THE ATTORNEY GENERAL

Continuous payments required for eligibility. — Clerk of superior court, to be eligible for retirement under the Superior Court Clerks' Retirement Fund, must make payments continuously. If a clerk withdraws any payments, the clerk would not be eligible at any time to become a member of the fund or receive any benefits. 1954-56 Op. Att'y Gen. p. 596.

Survivors benefits. — Benefits the spouse would be entitled to receive under Ga. L. 1964, p. 202, §§ 2 and 3 (see O.C.G.A. §§ 47-14-10 and 47-14-72) would be the same. 1967 Op. Att'y Gen. No. 67-225.

Credit for military service. — O.C.G.A. § 47-14-70 envisions that all creditable ser-

vice toward retirement as a superior court clerk after April 1, 1952, must be funded service for which payments are made; thus, employee contributions or dues must be made to the clerks' fund in order to establish credit for military service. 1982 Op. Att'y Gen. No. U82-33.

Effect of 1988 amendment. — Increase in retirement benefits from 80 to 90 percent in the 1988 amendment to O.C.G.A. § 47-14-70 are to be awarded only when current superior court clerks retire and apply for benefits, and there is nothing in the legislation to suggest that the amendment is to be given retroactive effect. 1988 Op. Att'y Gen. No. U88-28.

47-14-71. Eligibility for disability benefits; determination of disability.

Notwithstanding any other provisions of this chapter to the contrary, a member may retire after completing 16 years of creditable service if the member becomes totally and permanently disabled after commencing service as a clerk. Any such clerk shall be entitled to receive retirement benefits in the amount of \$1,700.00 per month. All questions relating to the degree and nature of the total and permanent disability suffered by the clerk shall be determined by the board. (Ga. L. 1964, p. 202, § 3; Ga. L. 1976, p. 729, § 3; Ga. L. 1978, p. 2069, § 2; Ga. L. 1981, p. 857, § 3; Ga. L. 1983, p. 555, § 3; Ga. L. 1986, p. 1252, § 2; Ga. L. 1988, p. 626, § 2; Ga. L. 1990, p. 1270, § 2; Ga. L. 1994, p. 1811, § 2; Ga. L. 1998, p. 158, § 5.)

OPINIONS OF THE ATTORNEY GENERAL

Age is not a factor in the benefit under this statute. If a clerk is eligible, the clerk is entitled to receive the benefit, regardless of the clerk's age. 1967 Op. Att'y Gen. No. 67-225.

47-14-72. Benefits payable in the event of death before retirement; rights of surviving spouse.

(a) In the event of the death of any clerk who has not retired under any of the provisions of this chapter, but who was eligible to do so, the surviving spouse shall receive a monthly sum during his or her lifetime equal to 50 percent of the amount such clerk would have received had he or she retired under subsection (c) of Code Section 47-14-70. In order to receive such benefits, any such spouse must be at least 55 years of age and have been married to such clerk for at least six years immediately preceding the death of such clerk.

(b)(1) Subject to the provisions of paragraph (2) of this subsection, the board is authorized to provide by rule or regulation that in the event of the death of any clerk who has satisfied all requirements for retirement provided by subsection (a) of Code Section 47-14-70 but who dies prior to attaining the age of 55, whether or not such clerk has terminated his or her official duties as clerk, the surviving spouse shall receive a monthly sum during his or her lifetime in an amount not greater than 50 percent of the amount such clerk would have received had he or she retired at age 55 as provided under subsection (c) of Code Section 47-14-70, the actual percent to be set by the board of commissioners in direct relation to the amount determined by the actuary pursuant to paragraph (2) of this subsection. In order to receive such benefits, any such spouse must be at least 55 years of age and have been married to such clerk for at least six years immediately preceding the death of such clerk. Once funded and granted, such benefit shall be irrevocable but shall be subject to the provisions of Code Section 47-14-90.

(2) The board of commissioners shall be authorized to provide for such level of benefits as provided in paragraph (1) of this subsection only upon:

(A) The recommendation of the actuary for the board;

(B) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(C) Such other factors as the board deems relevant. (Ga. L. 1964, p. 202, § 3; Ga. L. 1980, p. 1547, § 3; Ga. L. 2008, p. 722, § 4/SB 460; Ga. L. 2010, p. 1207, § 66/SB 436.)

The 2008 amendment, effective July 1, 2008, designated the existing provisions as subsection (a); in subsection (a), substituted “such clerk” for “the clerk” at the end of the last sentence; and added subsection (b).

The 2010 amendment, effective July 1, 2010, substituted “board of commissioners” for “board of trustees” in the first sentence of paragraph (b)(1) and near the beginning of paragraph (b)(2).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in

Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

OPINIONS OF THE ATTORNEY GENERAL

Survivors benefits under § 47-14-70(c). — Benefits the spouse would be entitled to receive under Ga. L. 1964, p. 202, §§ 2 and 3 (see O.C.G.A. §§ 47-14-70 and 47-14-72) would be the same. 1967 Op. Att’y Gen. No. 67-225.

Widow of clerk who retired before age 55.

— Widow of a clerk who terminated the clerk’s duties under Ga. L. 1953, Nov-Dec. Sess., p. 332, § 3 (see O.C.G.A. § 47-14-73), but who had not reached age 55, would not be eligible for death benefits, since the clerk was not eligible for retirement. 1971 Op. Att’y Gen. No. U71-104.

47-14-73. Eligibility to retire and receive retirement benefits; effect of retirement before age 55.

Any other provisions of this chapter to the contrary notwithstanding, a clerk may terminate his official duties as clerk and be eligible for retirement benefits if he has fulfilled the qualifications necessary therefor; but if he has not reached the age of 55 at the time he terminates his official duties, he shall not commence receiving his retirement benefits until he reaches that age. (Ga. L. 1952, p. 238, § 16; Ga. L. 1953, Nov-Dec. Sess., p. 332, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Survivors benefits. — If a clerk retires before reaching age 55 and wishes to provide benefits for a surviving spouse, the clerk would not be required to make the election at the time of retirement. The clerk could wait until the clerk reaches age 55 to do so. 1967 Op. Att’y Gen. No. 67-225.

Widow of a clerk who terminated the clerk’s duties under this statute, but who had not reached age 55, would not be eligible for death benefits, since the clerk was not eligible for retirement. 1971 Op. Att’y Gen. No. U71-104 (see O.C.G.A. § 47-14-73).

47-14-74. Application of certain increases in benefits to benefits paid to surviving spouses.

The increases in retirement benefits resulting from changes made in this chapter prior to January 1, 1998, and the increases in retirement benefits resulting from changes made in this chapter during calendar year 1998 shall also be used in the computation of any retirement benefits allowed a surviving spouse of a deceased clerk pursuant to the terms of this chapter. (Ga. L. 1976, p. 729, § 7; Ga. L. 1978, p. 2069, § 6; Ga. L. 1981, p. 857, § 6; Ga. L. 1983, p. 555, § 4; Ga. L. 1986, p. 1252, § 3; Ga. L. 1988, p. 626, § 3; Ga. L. 1990, p. 1270, § 3; Ga. L. 1994, p. 1811, § 3; Ga. L. 1998, p. 158, § 6.)

47-14-75. Eligibility for certain benefit increases.

Any other provisions of this chapter to the contrary notwithstanding, each member who retired prior to July 1, 1998, and all members who have ceased their service as clerks but have not yet reached retirement age shall receive benefits under this chapter in the same amount as a member with the same number of years of service would receive if such member retired on July 1, 1998. This Code section shall not reduce the amount of any benefits which a retired member or the spouse of a deceased member is receiving on June 30, 1998. The increased benefits provided by Code Section 47-14-71 and subsections (a), (d), and (e) of Code Section 47-14-70 shall be paid to retired members and spouses of deceased members, effective on July 1, 1998. (Ga. L. 1976, p. 729, § 9; Ga. L. 1978, p. 2069, § 7; Ga. L. 1981, p. 857, § 7; Ga. L. 1983, p. 555, § 5; Ga. L. 1986, p. 1252, § 4; Ga. L. 1988, p. 626, § 4; Ga. L. 1990, p. 1270, § 4; Ga. L. 1994, p. 1811, § 4; Ga. L. 1998, p. 158, § 7.)

47-14-76. Right to withdraw dues; effect of withdrawal on membership and benefits; eligibility to rejoin the fund.

Any member may withdraw the total sum, without interest, which he has paid into the fund. In order to become eligible to rejoin the fund and to receive any benefits under this chapter after such withdrawal, he must repay the entire amount which he has withdrawn, plus interest at 6 percent per annum. A member shall not receive credit for any service after such

withdrawal unless he pays the dues which he would have paid had he been a member of the fund during such period of service, plus interest on such amounts at 6 percent per annum. If any clerk dies before being retired, the total amount, without interest, which has been paid by him into the fund shall be paid to his estate. If, after retiring, any clerk should die without leaving a surviving spouse and without having received the amount in benefits equal to the amount which he had paid into the fund, the difference, without interest, shall be paid to his estate. If after retiring, any clerk should die leaving a surviving spouse and such surviving spouse should thereafter die without having received the amount of benefits equal to the amount which had been paid into the fund less the amount received by such clerk before his death, the difference, without interest, shall be paid to his estate. (Ga. L. 1952, p. 238, § 10; Ga. L. 1962, p. 67, § 3; Ga. L. 1964, p. 407, § 2; Ga. L. 1981, p. 693, § 1.)

JUDICIAL DECISIONS

Not entitled to credit. — Clerk, who had withdrawn from a superior court retirement fund and obtained a refund of all of the clerk's contributions, was not entitled to receive retirement credit for the almost 20 years the clerk had served as a county clerk after the clerk reapplied for membership in

the retirement fund because legislation was enacted that plainly prohibited obtaining any credit beyond the prior six months from the date of the application for membership. *Alston v. Superior Court Clerks' Ret. Fund*, 271 Ga. App. 143, 608 S.E.2d 734 (2004).

47-14-77. Service for which no credit received for retirement purposes.

(a) Notwithstanding any other provision of this chapter to the contrary, a clerk may not receive credit for retirement purposes for any service performed as a clerk prior to six months from the time application is made for membership in the fund.

(b) Notwithstanding any other provision of this chapter to the contrary, a clerk may not receive credit for retirement purposes for deputy clerk service or for military service unless such credits are sought at the time of application for membership in the fund.

(c) No member who first or again becomes a member on or after September 1, 2009, and who is subject to the provisions of Code Section 15-6-50 shall be entitled to include, for any purpose under this chapter, service during which he or she was not in compliance with the training requirements of subsection (c) of such Code section.

(d)(1) Notwithstanding any other provision of this chapter to the contrary, and except as provided in paragraph (2) of this subsection, a clerk who first or again becomes a member of this retirement fund on or after July 1, 2010, shall not be entitled to receive credit for any purpose for prior service as a deputy clerk.

(2) Any person who is serving as chief deputy clerk on July 1, 2010, and who, without a break in service, became the clerk of the same court may receive creditable service for such service as provided in Code Section 47-14-70 by making application to the board of trustees in such manner as the board deems appropriate and paying to the board of trustees an amount determined by the board of trustees to be sufficient to cover the full actuarial cost of granting such creditable service. Such application and payment shall be made not later than six months after such person became a clerk of the court. (Ga. L. 1982, p. 1273, § 2; Code 1981, § 47-14-77, enacted by Ga. L. 1982, p. 1273, § 4; Ga. L. 2009, p. 826, § 1/HB 488; Ga. L. 2010, p. 421, § 1/HB 486.)

The 2009 amendment, effective June 1, 2009, added subsection (c).

The 2010 amendment, effective July 1, 2010, added subsection (d).

JUDICIAL DECISIONS

Not entitled to credit. — Clerk, who had withdrawn from a superior court retirement fund and obtained a refund of all of the clerk's contributions, was not entitled to receive retirement credit for the almost 20 years the clerk had served as a county clerk after the clerk reapplied for membership in

the retirement fund because legislation was enacted that plainly prohibited obtaining any credit beyond the prior six months from the date of the application for membership. *Alston v. Superior Court Clerks' Ret. Fund*, 271 Ga. App. 143, 608 S.E.2d 734 (2004).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.

47-14-78. Service for which credit received for retirement purposes.

Any member of this retirement system who, prior to becoming a member, served as a clerk of a state court in which the clerk is someone other than the clerk of the superior court shall be entitled to not more than 20 years of creditable service for such prior service. Any such member shall make application to the board in such form and providing such documentation of such prior service as the board deems necessary. (Code 1981, § 47-14-78, enacted by Ga. L. 2002, p. 470, § 7.)

47-14-79. Death benefit paid to designated beneficiary of member who dies in service.

A death benefit in the amount of \$5,000.00 shall be paid to the designated beneficiary of any member who dies in service. In the absence of a designated beneficiary, such amount shall be paid to the deceased member's estate. For members eligible for a surviving spouse's benefit, such amount shall be in addition to the benefit provided pursuant to Code

Section 47-14-72. (Code 1981, § 47-14-79, enacted by Ga. L. 2010, p. 421, § 2/HB 486.)

Effective date. — This Code section became effective July 1, 2010.

ARTICLE 6

MISCELLANEOUS PROVISIONS

47-14-90. Reduction of benefits upon determination that available funds are insufficient; order of payment upon resumption of payments in full; liability of board for such reductions.

If the funds derived from the sources provided for in this chapter are not sufficient at any time to enable the board to pay, in full, each person determined to be entitled to benefits under this chapter, then the prorated percentage of such payments shall be made to each such person until the fund shall be replenished sufficiently to enable the board to resume such payments in accordance with this chapter. Before resuming such payments, all persons who received deficiency payments shall be paid in full. In no event shall the board or any member of the board be liable to any person for any deficiencies in payments made under this Code section. (Ga. L. 1952, p. 238, § 11.)

47-14-91. Exemption of rights and benefits under this chapter from taxation; exemption from levy and sale, garnishment, attachment, or other process; assignability.

The right to any pension, allowance, or benefit; the right to the return of contributions; any optional benefit; or any other right accrued or accruing to any person under this chapter; and moneys under this chapter shall be exempt from any tax imposed by any state, county, municipal, or other political subdivision, except as provided in Code Section 48-7-27, and shall be exempt from levy and sale, garnishment, attachment, or any other process. Such funds and benefits shall not be assignable. (Ga. L. 1952, p. 238, § 13; Ga. L. 1968, p. 381, § 1; Ga. L. 2000, p. 1449, § 7.)

CHAPTER 15

SUPERIOR COURT REPORTERS EMERITUS

Sec.		Sec.	
47-15-1.	Creation of the office of superior court reporter emeritus.		reporter emeritus; duties; additional compensation for performance of duties.
47-15-2.	Eligibility for appointment as superior court reporter emeritus.	47-15-5.	Duty of counties to pay salaries of superior court reporters emeritus; duty to levy taxes sufficient to pay such salaries.
47-15-3.	Salary payable to superior court reporters emeritus.		
47-15-4.	Term of office as superior court		

47-15-1. Creation of the office of superior court reporter emeritus.

There is created the office of superior court reporter emeritus. (Ga. L. 1952, p. 79, § 1.)

47-15-2. Eligibility for appointment as superior court reporter emeritus.

- (a) As used in this Code section, the term “year” means all or any portion of a calendar year during which a reporter or court stenographer served as official reporter under appointment by the presiding judge of the circuit.
- (b) Any reporter or court stenographer in any superior court judicial circuit who has so served for 40 or more consecutive years in the same circuit shall be eligible for appointment as superior court reporter emeritus and shall be appointed to that office by the judge of the superior court of the circuit, upon application by the reporter or court stenographer. (Ga. L. 1952, p. 79, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 355.)

47-15-3. Salary payable to superior court reporters emeritus.

Each superior court reporter emeritus shall be paid a salary of \$200.00 per month, which salary shall be paid on the first day of each month. (Ga. L. 1952, p. 79, § 3.)

47-15-4. Term of office as superior court reporter emeritus; duties; additional compensation for performance of duties.

Each superior court reporter emeritus shall hold such office for life. It shall be his duty to serve as a court reporter whenever the judge of the superior court of his circuit shall call upon him to do so, without additional compensation except for civil cases. For reporting and transcribing civil cases he shall be paid the fee provided by law. (Ga. L. 1952, p. 79, § 4.)

47-15-5. Duty of counties to pay salaries of superior court reporters emeritus; duty to levy taxes sufficient to pay such salaries.

(a) The salary provided for in Code Section 47-15-3 shall be paid pro rata out of the general treasuries of the various counties comprising the circuit of the court reporter emeritus, upon the basis of population. Each of the counties comprising such circuit shall pay such part or portion of such salary as its population bears to the total population of all counties of such circuit according to the most recent United States decennial census.

(b) It shall be the duty of the county governing authorities of the various counties comprising the circuit of such court reporter emeritus, when levying taxes for expenses of courts, to levy and make collection of sufficient taxes in their respective counties for the purpose of paying the portion of the salary of the court reporter emeritus chargeable against the respective counties. (Ga. L. 1952, p. 79, §§ 5, 6.)

CHAPTER 16

SHERIFFS' RETIREMENT FUND OF GEORGIA

Article 1		Sec.	
General Provisions			
Sec.			the fund; contents of application; claim for credit for prior service.
47-16-1.	Definitions.	47-16-41.	Delayed application for membership in the fund; credit for prior service as a sheriff, member of the armed forces of the United States, or peace officer.
Article 2			
Creation, Administration, and Management of the Assets of the Fund			
47-16-20.	Creation of the fund and the board of commissioners.	47-16-42.	Effect of membership or participation in other retirement programs on membership and benefits under this chapter.
47-16-21.	Membership of the board.		
47-16-22.	Quorum for conduct of business by the board; records of meetings of the board.	47-16-43.	Requirements for continued active membership in the fund.
47-16-23.	Compensation and expenses of members of the board.	47-16-44.	Removal from active membership roll; requirements for reinstatement to active membership; claim for credit for service during period of inactive membership.
47-16-24.	Creation of the office of secretary-treasurer; periodic reports of moneys in hand, receipts, and expenditures; performance bond.		
47-16-25.	Powers and duties of the board generally.	Article 4	
47-16-26.	Power of board to control, invest, and expend funds; gifts, grants, or bequests; deposit of funds received by the board; payment of benefits and administrative expenses.	Revenues Collected from Fines, Forfeitures, and Fees	
47-16-27.	Duty of board to keep records of accounts and operations; presentation of annual financial statement to Georgia Sheriffs' Association.	47-16-60.	Payments to fund from fines and bonds collected in criminal and quasi-criminal cases; duty of collecting authority to record and remit; penalty for late payment.
47-16-28.	Duty of state auditor to make an annual audit and report of the operations of the board; right of state auditor to audit the affairs of the board; contents of annual report.	47-16-61.	Payments to fund from fees collected in civil actions; duty to record and remit sums collected; penalties on delinquent amounts.
47-16-29.	Increases in maximum monthly benefit payable under Article 6 of this chapter.		
Article 3		Article 5	
Membership in and Contributions to the Fund		Service Creditable Toward Retirement	
47-16-40.	Application for membership in	47-16-80.	Credit for prior service in the armed forces of the United States or as a peace officer.
		47-16-81.	Credit for prior service as sheriff, member of armed forces of United States, or peace officer; notice; amendment of application.
		47-16-82.	Credit for prior service as a

- Sec. warden of a county correctional institution.
- 47-16-83. Payment of dues as prerequisite to credit for service on and after January 1, 1961.
- 47-16-84. Members appointed to fill anticipated vacancies in office of sheriff prior to becoming members.

Article 6

Retirement Benefits and Death Benefits

- 47-16-100. Eligibility for retirement benefits.
- 47-16-101. Retirement benefit options; failure of member to select an option; effect of changes in retirement benefits and options; change of option after receipt of payments.
- 47-16-102. Death benefits; beneficiaries;

- Sec. procedure for designation of beneficiary to receive such benefits.
- 47-16-103. Right to withdraw dues; effect of withdrawal on membership and benefits.

Article 7

Miscellaneous Provisions

- 47-16-120. Vesting of rights to benefits under this chapter.
- 47-16-121. Reduction of benefits when available funds are actuarially insufficient; resumption of payments; personal liability of board for such reductions.
- 47-16-122. Exemption of funds from attachment, garnishment, or judgment; assignability.
- 47-16-123. Exemptions of moneys and rights accruing under this chapter from taxation.

ARTICLE 1

GENERAL PROVISIONS

47-16-1. Definitions.

As used in this chapter, the term:

- (1) "Board" means the Board of Commissioners of the Sheriffs' Retirement Fund of Georgia.
- (2) "Fund" means the Sheriffs' Retirement Fund of Georgia.
- (3) "Member" means a member of the Sheriffs' Retirement Fund of Georgia. (Ga. L. 1982, p. 3, § 47.)

ARTICLE 2

CREATION, ADMINISTRATION, AND MANAGEMENT OF THE ASSETS OF THE FUND

47-16-20. Creation of the fund and the board of commissioners.

There is created a retirement fund, to be known as the "Sheriffs' Retirement Fund of Georgia," and a board to administer this fund, to be known as the "Board of Commissioners of the Sheriffs' Retirement Fund of Georgia." (Ga. L. 1963, p. 630, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244.
C.J.S. — 70 C.J.S., Pensions, §§ 1 et seq., 5 et seq. 80 C.J.S., Sheriffs and Constables, § 470 et seq.

47-16-21. Membership of the board.

(a) The board shall consist of six members as follows:

(1) The state treasurer;

(2) One former sheriff who is receiving benefits as a retired beneficiary of the fund; and

(3) Four persons holding office as sheriffs of Georgia, each of whom shall be active members of the fund and shall have held office as a sheriff for at least four years.

(b) The state treasurer shall begin serving on the board on July 1, 1984. The position of the state treasurer on the board shall be the successor to the position on the board held by the president of the Association County Commissioners of Georgia, which shall stand abolished on June 30, 1984.

(c) The term of office of the retired member of the board holding office on January 1, 1984, which is scheduled to expire on March 31, 1984, is extended to expire on June 30, 1984. The Governor shall appoint a successor, pursuant to the position provided for by paragraph (2) of subsection (a) of this Code section, to take office on July 1, 1984, for a term of one year and until a successor is appointed and qualified. Thereafter, the Governor shall appoint a successor pursuant to the position provided for by paragraph (2) of subsection (a) of this Code section to take office upon the expiration of the term of office for a term of two years and until a successor is appointed and qualified.

(d) The first four members of the board provided for by paragraph (3) of subsection (a) of this Code section shall be appointed by the Governor to take office on July 1, 1984. Such members shall be successors to Sheriffs D. Lamar Stewart, E. W. Phillips, Wesley Walraven, and Franklin Thornton whose terms of office as members of the board shall terminate on June 30, 1984. Their successors shall be appointed by the Governor for initial terms of office as follows:

(1) The member appointed as the successor to Sheriff D. Lamar Stewart shall be appointed for a term of one year;

(2) The member appointed as the successor to Sheriff E. W. Phillips shall be appointed for a term of two years;

(3) The member appointed as the successor to Sheriff Wesley Walraven shall be appointed for a term of three years; and

(4) The member appointed as the successor to Sheriff Franklin Thornton shall be appointed for a term of four years.

(e) Beginning in 1985, the Governor shall annually appoint a successor to the member of the board appointed pursuant to subsection (d) of this Code section whose respective term of office is expiring. Each such successor shall be appointed by the Governor for a term of four years and until a successor is appointed and qualified. Thereafter, successors shall be appointed by the Governor upon the expiration of the respective terms of office for terms of four years and until such successors are appointed and qualified.

(f) Any appointed member of the board continuing to meet the respective qualifications for membership on the board shall be eligible for reappointment to successive terms as a member of the board. If a member of the board holding a position specified by paragraph (3) of subsection (a) of this Code section ceases to hold office as sheriff for any reason, except for retirement as a beneficiary of the fund, such member's position on the board shall thereby become vacant; but, if any such member retires to become a beneficiary of the fund during a term of office, such member may serve until the expiration of the term to which the member was appointed. A vacancy which occurs for any reason in the membership of the board shall be filled as follows:

(1) If the vacancy is in the position specified by paragraph (2) of subsection (a) of this Code section, the Governor shall appoint a qualified person to fill such vacancy for the unexpired term; and

(2) If the vacancy is in a position specified by paragraph (3) of subsection (a) of this Code section, the remaining members of the board shall elect a qualified person to fill such vacancy for the unexpired term.

(g) By a majority vote of its full membership the board shall elect a chairman from the membership of the board. The chairman shall serve for a term fixed by rules of the board.

(h) The Georgia Sheriffs' Association shall be authorized to submit the names of nominees for each position on the board appointed by the Governor pursuant to this Code section. The Governor may consider the nominees made by the Georgia Sheriffs' Association in making such appointments, but it is specifically provided that all such appointments shall be at the sole discretion of the Governor, and the Governor shall not be required to make any appointments from nominees made by the Georgia Sheriffs' Association. (Ga. L. 1963, p. 630, § 2; Ga. L. 1968, p. 1203, § 1; Ga. L. 1975, p. 830, §§ 1, 2; Ga. L. 1977, p. 645, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 1185, § 1; Ga. L. 1984, p. 507, § 1; Ga. L. 1985, p. 514, § 1; Ga. L. 1987, p. 535, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" in paragraph (a)(1) and twice in subsection (b).

Editor's notes. — Ga. L. 1984, p. 507, § 2, not codified by the General Assembly, provided that that Act, which amended this

Code section, shall become effective June 30, 1984, except that it shall become effective upon the date of the Governor's approval (March 15, 1984) for the administrative purpose of allowing the Governor to consider appointments pursuant to the revised language of § 47-16-21.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. 63C Am. Jur. 2d, Public Officers and Employees, §§ 90, 139, 287.

C.J.S. — 67 C.J.S., Officers, §§ 47, 86 et seq., 279 et seq.

47-16-22. Quorum for conduct of business by the board; records of meetings of the board.

(a) Three members of the board shall constitute a quorum for the conduct of business by the board.

(b) The board shall keep records of all its meetings. (Ga. L. 1963, p. 630, §§ 2, 3.)

47-16-23. Compensation and expenses of members of the board.

All members of the board shall serve without pay but shall be reimbursed for actual expenses incurred in attending meetings and performing the duties required of them as members of the board. (Ga. L. 1963, p. 630, § 2.)

47-16-24. Creation of the office of secretary-treasurer; periodic reports of moneys in hand, receipts, and expenditures; performance bond.

(a) There is created the office of secretary-treasurer of the Board of Commissioners of the Sheriffs' Retirement Fund of Georgia, who shall be elected and appointed by the board and shall serve at its pleasure. His compensation shall be fixed by the board. He shall have such power and authority and shall perform such duties and services as the board may direct.

(b) The secretary-treasurer shall make quarterly reports to the board showing the total amount of moneys in his hands at the time such report is made and also showing a full accounting of receipts and expenditures since his last quarterly report.

(c) The secretary-treasurer shall give a good and sufficient surety bond in an amount to be determined by the board. The bond shall be made payable to the board and shall be contingent upon the proper and faithful performance of his duties as secretary-treasurer. (Ga. L. 1963, p. 630, §§ 7, 8; Ga. L. 1978, p. 1688, § 1; Ga. L. 1982, p. 1060, §§ 1, 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 97, 299, 453.

C.J.S. — 67 C.J.S., Officers, §§ 47, 224 et seq., 236, 277 et seq.

47-16-25. Powers and duties of the board generally.

(a) The board shall have the power and duty to:

- (1) Provide for the collection of all moneys;
- (2) Provide for the payment of all administrative expenses;
- (3) Hear and decide all applications for retirement benefits under this chapter;
- (4) Provide for the payment of all retirement benefits that may be determined to be due under this chapter and lawful rules and regulations as adopted by the board;
- (5) Make all necessary rules and regulations not inconsistent with law for the operation of the fund;
- (6) Determine and fix rules of eligibility for retirement benefits under this chapter; and
- (7) Provide for refunds and repayments to persons who may be entitled to receive them.

(b) The board shall have all other powers necessary for the proper administration of the fund. (Ga. L. 1963, p. 630, § 3; Ga. L. 1968, p. 1203, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1244. 63C Am. Jur. 2d, Public Officers and Employees, §§ 299 et seq., 312.

C.J.S. — 70 C.J.S., Pensions, §§ 1 et seq., 5 et seq., 10, 12 et seq., 15.

47-16-26. Power of board to control, invest, and expend funds; gifts, grants, or bequests; deposit of funds received by the board; payment of benefits and administrative expenses.

(a) The board shall have control over the funds provided for in this chapter, authority to expend such funds in accordance with this chapter, and authority to invest the funds subject to all terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the “Public Retirement Systems Investment Authority Law.”

(b) The board may take, by gift, grant, or bequest, any money, real or personal property, or any other things of value and may hold, invest, sell, or

otherwise dispose of the same for the uses and purposes of the fund in accordance with this chapter.

(c) All funds received by the board shall be deposited in a special account to the credit of the board.

(d) Benefits under this chapter and all administrative expenses shall be paid from such funds. (Ga. L. 1963, p. 630, § 5; Ga. L. 1982, p. 925, §§ 1, 2; Ga. L. 1987, p. 534, § 1; Ga. L. 1997, p. 966, § 3; Ga. L. 2000, p. 2, § 11.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

47-16-27. Duty of board to keep records of accounts and operations; presentation of annual financial statement to Georgia Sheriffs' Association.

(a) The board shall keep accurate permanent records of all persons who qualify to participate in the fund and shall keep accurate permanent records of all its accounts in granting retirement benefits and of all payments, disbursements, and investments. It shall also keep proper detailed records of all its acts and operations.

(b) The board shall present each year at the annual convention of the Georgia Sheriffs' Association a financial statement of the fund for the preceding year. (Ga. L. 1963, p. 630, § 4; Ga. L. 1968, p. 1203, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1228 et seq. **C.J.S.** — 81A C.J.S., States, § 388 et seq.

47-16-28. Duty of state auditor to make an annual audit and report of the operations of the board; right of state auditor to audit the affairs of the board; contents of annual report.

The state auditor is authorized and directed to make an annual audit of the operations of the board and to make a complete report of that audit to the General Assembly. The state auditor shall not be required to distribute copies of the report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient. The report shall disclose all moneys received by the board and all expenditures made by it, including administrative expenses and payments of benefits. The state auditor shall also have the right, in his or her discretion, to audit the affairs of the board at any time, and he or she may also audit the affairs of the board at any time,

upon request of a majority of the members of the board. (Ga. L. 1963, p. 630, § 9; Ga. L. 1968, p. 1203, § 4; Ga. L. 2005, p. 1036, § 35/SB 49.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 77. **C.J.S.** — 81A C.J.S., States, § 388 et seq.

47-16-29. Increases in maximum monthly benefit payable under Article 6 of this chapter.

(a) Subject to the terms and limitations of this Code section, the board of commissioners is authorized to adopt from time to time a method or methods of providing for increases in the maximum monthly retirement benefit payable under Article 6 of this chapter for persons theretofore or thereafter retiring under this chapter. Such method shall be based upon:

- (1) The recommendation of the actuary of the board of commissioners;
- (2) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and
- (3) Such other factors as the board deems relevant.

Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board of commissioners shall determine.

(b) An initial increase may be granted pursuant to subsection (a) of this Code section to become effective on July 1, 1993, not to exceed 3 percent of the maximum monthly retirement benefit then in effect. Thereafter, such increases may be authorized effective as of January 1 and July 1 of each year; provided, however, that no such increase shall exceed 1 1/2 percent of the maximum monthly retirement benefit then in effect.

(c) No increase shall be made pursuant to subsection (a) of this Code section to become effective within six months of the effective date of any increase in the maximum retirement benefit granted by the General Assembly through amendment of Code Section 47-16-101. (Code 1981, § 47-16-29, enacted by Ga. L. 1993, p. 608, § 1; Ga. L. 2010, p. 1207, § 66/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “board of commissioners” for “board of trustees” three times in subsection (a).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to

repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled

pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or

election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

ARTICLE 3

MEMBERSHIP IN AND CONTRIBUTIONS TO THE FUND

47-16-40. Application for membership in the fund; contents of application; claim for credit for prior service.

In order to become a member of the Sheriffs' Retirement Fund of Georgia, an applicant must meet the following requirements:

(1) He must be a duly qualified and commissioned sheriff of a county of the State of Georgia, serving as sheriff of the superior court of that county at the time he files his application;

(2) He must file his application for membership with the secretary-treasurer within one year from the date he begins service as a sheriff or within the time limits set forth in Code Section 47-16-41;

(3) He must set out in the application for membership his correct date of birth;

(4) He must list in his application for membership all periods of prior service, including credit under Code Section 47-16-80 for services in the armed forces of the United States or as a peace officer, for which service he intends to ask credit as basis for his future retirement, or shall forever be barred from claiming credit for services not so listed;

(5) The member must tender with the application, within 12 months from the date of that application, or at such other time as the board may provide, a sum equal to the total of \$37.50 per month for credit claimed by the member under paragraph (4) of this Code section for past service from and including January 1, 1961, to the date of application; or if such amount is not paid by the due date, the member shall be conclusively deemed to have waived his or her claim or right for credit for such period of time; or

(6) He must also furnish to the board such other information and proof of pertinent facts set out in the application for membership or relative to it as may be required by the board; and failure to do so shall constitute grounds for denial of the application for membership by the board. (Ga. L. 1963, p. 630, § 11; Ga. L. 1968, p. 1203, § 6; Ga. L. 1969, p. 586, § 1; Ga. L. 1983, p. 1185, § 2; Ga. L. 1990, p. 315, § 1; Ga. L. 1994, p. 325, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1175, 1192 et seq.

47-16-41. Delayed application for membership in the fund; credit for prior service as a sheriff, member of the armed forces of the United States, or peace officer.

(a) Any duly qualified and commissioned sheriff who would be eligible to become a member but for the provisions of paragraph (2) of Code Section 47-16-40 shall be permitted to become a member if he files his application with the secretary-treasurer of the board between June 1, 1969, and June 30, 1969, or within 30 days following the beginning of such sheriff's new elective or appointive term.

(b) Any sheriff who has served as a sheriff of a county of this state at any time since 1960 and who has not been a member of the fund may become a member by means of either of the following procedures:

(1) He may claim credit for all prior service as a sheriff by tendering payment of all amounts which he would have paid had he been a member of the fund, together with interest on such amounts at 8 percent per annum and such reasonable penalty as may be imposed by the board; or

(2) He may waive credit for prior service as a sheriff and be credited for service beginning on the first day of the elective or appointive term in which his application is submitted to and accepted by the board.

In no event shall any sheriff who joins the fund under this subsection or subsection (a) of this Code section be permitted to claim credit for prior service as a peace officer, except sheriff, or member of any of the armed forces of the United States under Code Section 47-16-80.

(c) Any currently serving sheriff who was previously a member of the fund but who subsequently ceased to be a sheriff and withdrew from the fund may, upon again becoming a sheriff, become a member of the fund by submitting an application to the secretary-treasurer of the board between July 1, 1994, and December 31, 1994. After December 31, 1994, any person who was previously a member of the fund and subsequently ceased to be a sheriff and withdrew from the fund may become a member of the fund by submitting an application to the secretary-treasurer of the board within one year from the date he or she again becomes a sheriff. No sheriff who joins the fund pursuant to this subsection shall be entitled to claim credit for prior service as a sheriff, a peace officer, or a member of the armed services. (Ga. L. 1969, p. 586, § 3; Ga. L. 1994, p. 328, § 1; Ga. L. 1995, p. 27, § 1; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “, except sheriff,” for “(except sheriff)” in the ending undesignated paragraph of subsection (b).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to

provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1175, 1192 et seq.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 470 et seq.

47-16-42. Effect of membership or participation in other retirement programs on membership and benefits under this chapter.

Membership in this retirement fund shall not be affected by membership or participation in any other fund or retirement system. There shall be no reduction in benefits predicated solely upon eligibility of the member to benefits from another independent source of retirement or pension. The benefits under this chapter are to be in addition to any other retirement benefits. There shall be no reduction in benefits otherwise payable to any member under any other state or quasi-state sponsored or sanctioned fund or retirement system because of membership and participation in this retirement fund. (Ga. L. 1963, p. 630, § 23; Ga. L. 1974, p. 1194, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1229 et seq.

47-16-43. Requirements for continued active membership in the fund.

In order to retain active membership in the fund, each member must:

(1) Continue serving as a sheriff;

(2) Pay to the secretary-treasurer membership dues of \$45.00 per month. Such payment shall be due on or before the tenth day of the following month until the member has made such payments for a total of 30 years; and

(3) Comply with all other mandatory provisions of this chapter and all rules and regulations promulgated by the board. (Ga. L. 1963, p. 630, § 13; Ga. L. 1968, p. 1203, § 8; Ga. L. 1981, p. 1889, § 1; Ga. L. 1983, p. 1185, § 3; Ga. L. 1988, p. 1566, § 1; Ga. L. 1990, p. 315, § 2; Ga. L. 1994, p. 325, § 2; Ga. L. 2000, p. 1167, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1175, 1192 et seq. **C.J.S.** — 80 C.J.S., Sheriffs and Constables, § 470 et seq.

47-16-44. Removal from active membership roll; requirements for reinstatement to active membership; claim for credit for service during period of inactive membership.

(a) If a member fails to comply with the requirements of Code Section 47-16-43 for any reason, the board shall remove him from the active membership roll and place him on the inactive or dormant roll. During such time as he may be on the inactive or dormant roll, he shall receive no credit for service as a basis for his retirement unless and until he is reinstated as an active member.

(b) If the removal was occasioned by noncompliance with paragraph (1) of Code Section 47-16-43, the member may be reinstated to the active membership roll upon again becoming a sheriff and filing his application for reinstatement within 12 months from the date he again becomes a sheriff. In his application for reinstatement, he may also list and claim credit for any time he may have served in the armed forces of the United States or as a peace officer during such inactive or dormant membership period, provided that such claim otherwise meets the requirements and limitations of Code Section 47-16-80. The time of filing this application and claim for credit and the payment of dues in order to receive credit for services performed during such inactive or dormant period of membership shall be governed by paragraphs (2), (4), and (5) of Code Section 47-16-40, respectively.

(c) If the removal is occasioned by noncompliance with paragraph (2) of Code Section 47-16-43, upon filing an application for reinstatement to the active membership roll within 12 months from the date of first default and payment of all dues then in default, together with interest on such amounts at 8 percent per annum from the date of such default to the date of payment and such reasonable penalty as may be imposed by the board, the member may be reinstated to the active membership roll and credited for such service. The member may elect to be reinstated to active membership in the fund without credit for prior service, in which case he will not be required to pay dues in default or interest thereon. In such case, he shall receive credit for service from the first day of the term in which his application for reinstatement is submitted to and approved by the board.

Application for reinstatement under this subsection shall be accepted by the board only if it is filed by the member between June 1, 1969, and June 30, 1969, or within 30 days following the beginning of his new elective or appointive term.

(d) If the removal is occasioned by noncompliance with paragraph (3) of Code Section 47-16-43, the member may be reinstated to the active roll upon compliance with such reasonable rules and regulations as may be provided by the board. (Ga. L. 1963, p. 630, § 14; Ga. L. 1968, p. 1203, § 9; Ga. L. 1969, p. 586, § 2; Ga. L. 1982, p. 3, § 47.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1187 et seq.

ARTICLE 4

REVENUES COLLECTED FROM FINES, FORFEITURES, AND FEES

47-16-60. Payments to fund from fines and bonds collected in criminal and quasi-criminal cases; duty of collecting authority to record and remit; penalty for late payment.

(a) The sum of \$2.00 shall be allocated to the board from each fine collected and each bond forfeited and collected in any criminal or quasi-criminal case for violation of state law, including traffic laws, which case is before any court of this state in which a sheriff of a superior court or a duly authorized deputy of such sheriff acts as sheriff to such court by virtue of his office, provided that such fine or bond, which shall be construed to include costs, is at least \$5.00. The clerk or other collecting authority for the court in which the fine or bond is collected shall pay such amounts to the secretary-treasurer each quarter or at such other times as the board may provide. These sums shall be paid to the secretary-treasurer before the payment of any costs or any claim whatsoever against such fine or forfeiture, provided that this shall not be construed to repeal any existing priorities established under the laws of this state. It shall be the duty of the clerk or other collecting authority for each court to keep accurate records of the amounts due to the board and to remit the amounts due promptly. Such records may be audited by the board at any time. The sums remitted to the board under this Code section shall be used only for the purposes provided for in this chapter.

(b) If the person or authority whose duty it is to collect and remit moneys to the secretary-treasurer under subsection (a) of this Code section shall fail to remit such moneys within 60 days of the date on which such remittal is due, such moneys shall be delinquent; and there shall be imposed, in addition to the principal amount due, a specific penalty in the amount of 5

percent of the principal amount per month for each month during which the moneys continue to be delinquent, provided that such penalty shall not exceed a total of 25 percent of the principal due. In addition to such penalty, interest shall be charged on the delinquent moneys at the rate of 6 percent per annum from the date such moneys become delinquent until they are paid. All moneys due on or before May 1, 1968, and not paid shall be delinquent after the expiration of 60 days from that date. By affirmative vote of all the members, the board, upon the payment of the delinquent moneys together with interest and for good cause shown, may waive the specific penalty otherwise charged under this subsection. (Ga. L. 1963, p. 630, § 10; Ga. L. 1968, p. 1203, § 5; Ga. L. 1988, p. 352, § 1; Ga. L. 1989, p. 52, § 1.)

JUDICIAL DECISIONS

Cited in Peace Officers' Annuity & Benefit Fund v. Blocker, 135 Ga. App. 822, 219 S.E.2d 456 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Payments are not "costs." — Contributions to the Superior Court Clerks' Retirement Fund and the Sheriffs' Retirement Fund are not embraced within the word "costs" as that term is used in the setting of criminal proceedings; therefore, such contributions are statutorily created charges against the fine itself. 1972 Op. Att'y Gen. No. 72-29.

When payment required. — If all other costs and fees came to at least \$3.50, so that the additional \$1.50 for the fund would make a total of \$5.00 or more, then the additional \$1.50 should be added and included. 1963-65 Op. Att'y Gen. p. 609.

Keeping records of amounts due. — Records of amounts due the Sheriffs' Retirement Fund must be kept by the clerk of the court, or if there is no clerk, by the court itself. 1970 Op. Att'y Gen. No. U70-85.

Remittances from magistrate courts. — Remittances are required from the magistrate courts to the Sheriffs' Retirement Fund under subsection (b) of O.C.G.A. § 47-16-60, added in 1986, and will be required for the Peace Officers' Annuity and Benefit Fund as of July 1, 1987 by virtue of Act No. 572 which amends O.C.G.A. § 47-17-60. 1987 Op. Att'y Gen. No. U87-12, supplementing 1986 Op. Att'y Gen. U86-33.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

47-16-61. Payments to fund from fees collected in civil actions; duty to record and remit sums collected; penalties on delinquent amounts.

(a) In addition to all other legal costs, the sum of \$1.00 shall be charged and collected in each civil action, case, or proceeding, including, without limiting the generality of the foregoing, all adoptions, charters, certiorari, applications by personal representative for leave to sell or invest, trade

name registrations, applications for change of name, and all other proceedings of a civil nature filed in the superior courts. The clerks of the superior courts shall collect such fees, and the fees so collected shall be remitted to the board quarterly or at such other time as the board may provide. It shall be the duty of the clerks of the superior courts to keep accurate records of the amounts due the board under this subsection, and such records may be audited by the board at any time. The sums remitted to the board under this subsection shall be used only for the purposes provided for in this chapter.

(b) In addition to all other legal costs, the sum of \$1.00 shall be charged and collected in each civil action, case, or proceeding, including, without limiting the generality of the foregoing, all adoptions, charters, certiorari, applications by personal representative for leave to sell or invest, trade name registrations, applications for change of name, and all other proceedings of a civil nature filed in the state courts and magistrate courts of this state in which the sheriff of the superior court also fulfills the function as sheriff of such inferior court. The clerks of such state courts and magistrate courts shall collect such fees, and the fees so collected shall be remitted to the board quarterly or at such other time as the board may provide. It shall be the duty of the clerks of such state courts and magistrate courts to keep accurate records of the amounts due the board under this subsection, and such records may be audited by the board at any time. The sums remitted to the board under this subsection shall be used only for the purposes provided for in this chapter.

(c) If the person or authority whose duty it is to collect and remit moneys to the secretary-treasurer under subsection (a) or subsection (b) of this Code section shall fail to remit such moneys within 60 days of the date on which such remittal is due, such moneys shall be delinquent; and there shall be imposed, in addition to the principal amount due, a specific penalty in the amount of 5 percent of the principal amount per month for each month during which the moneys continue to be delinquent, provided that such penalty shall not exceed a total of 25 percent of the principal due. In addition to such penalty, interest shall be charged on the delinquent moneys at the rate of 6 percent per annum from the date such moneys become delinquent until they are paid. By affirmative vote of all the members, the board upon the payment of the delinquent moneys, together with interest, for good cause shown may waive the specific penalty otherwise charged under this subsection. (Ga. L. 1981, p. 918, § 1; Ga. L. 1986, p. 604, § 1; Ga. L. 1989, p. 1153, § 1; Ga. L. 1991, p. 753, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

When fee to be collected. — Additional sum of \$1.00 which superior court clerks are authorized by O.C.G.A. § 47-16-61 to collect as costs and remit to the Board of Commis-

sioners of the Sheriffs' Retirement Fund should be charged and collected upon the filing of articles of amendment, articles of merger, and articles of dissolution, as well as

articles of incorporation, pursuant to O.C.G.A. Ch. 2, T. 14. 1981 Op. Att’y Gen. No. 81-56.

Remittances from magistrate courts. — Remittances are required from the magistrate courts to the Sheriffs’ Retirement Fund under subsection (b) of O.C.G.A. § 47-16-61, added in 1986, and will be required for the Peace Officers’ Annuity and Benefit Fund as of July 1, 1987 by virtue of Act No. 572 which amends O.C.G.A. § 47-17-60. 1987 Op. Att’y Gen. No. U87-12, supplementing 1986 Op. Att’y Gen. U86-33.

Petitions filed under Family Violence Act. — One dollar fees for the clerks’ and sher-

iffs’ retirement funds should be charged in addition to the filing fees for a petition filed under the Family Violence Act, O.C.G.A. § 19-13-1 et seq. 1988 Op. Att’y Gen. No. U88-11.

Civil Court exempt from remitting fees to Sheriff’s Retirement Fund. — If the sheriff of a civil court is a constable of the magistrate court and functions independently of the sheriff of the superior court under O.C.G.A. § 15-10-27, the civil court is exempt from collecting and remitting fees to the Sheriff’s Retirement Fund under subsection (b) of O.C.G.A. § 47-16-61. 1992 Op. Att’y Gen. No. U92-15.

ARTICLE 5

SERVICE CREDITABLE TOWARD RETIREMENT

47-16-80. Credit for prior service in the armed forces of the United States or as a peace officer.

In addition to listing and claiming credit for prior services as a sheriff under paragraph (4) of Code Section 47-16-40, the applicant may elect to list and claim credit for service in the armed forces of the United States, not to exceed four years, and service as a peace officer other than as a sheriff, not to exceed four years, provided that he was employed during such period as a peace officer by the state, a municipality, or any other political subdivision of this state and was required by the terms of such employment, whether by election or appointment, to devote his full time to the duties of a peace officer. Upon approval or acceptance of such claims by the board, the applicant shall be credited with such service as a basis for future contemplated retirement, provided that credit for such service shall be available only if the applicant shall have served as a sheriff for a minimum of eight years subsequent to December 31, 1960, and subsequent to periods of service for which credit under this Code section is claimed; provided, further, that amounts due under paragraph (5) of Code Section 47-16-40 have been paid for such periods. (Ga. L. 1963, p. 630, § 12; Ga. L. 1968, p. 1203, § 7.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

OPINIONS OF THE ATTORNEY GENERAL

Public works camp warden is not a “peace officer” within the meaning of this statute. 1968 Op. Att’y Gen. No. 68-101. (See O.C.G.A. § 47-16-80; but see § 47-16-82 for credit for such service.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.

47-16-81. Credit for prior service as sheriff, member of armed forces of United States, or peace officer; notice; amendment of application.

(a) Any other provisions of this chapter to the contrary notwithstanding, any active member who has previously waived his claim for credit for any prior service as a sheriff, member of the armed forces of the United States, or peace officer, by his failure to comply with paragraph (2), (4), or (5) of Code Section 47-16-40 or by his failure to list such prior service in his application for membership, shall be entitled, as of May 1, 1980, to claim credit for any such prior service in accordance with this chapter and subsections (b) through (d) of this Code section.

(b) Any such member shall give written notice to the secretary-treasurer of his claim for credit for such prior service, together with an amendment to his application for membership, in such form as may be approved by the board. The amendment shall list all such periods of prior service for which he intends to claim credit as a basis for his future retirement. The notice and amendment shall be filed prior to July 31, 1980, or within the first 30 days of any new term of office of such member.

(c) At the time such member gives written notification to the secretary-treasurer, such member must also tender payment of all amounts due under paragraph (5) of Code Section 47-16-40 for the prior service listed in the amendment to his application for membership, together with interest on such amounts at 8 percent per annum from the date of acceptance of his original application for membership.

(d) Upon approval or acceptance of the amendment by the board and receipt of such member's payment of the amount with interest due under subsection (c) of this Code section, he shall be credited with his claimed prior service as a sheriff, member of the armed forces of the United States, or as a peace officer as a basis for his future retirement. (Ga. L. 1980, p. 461, § 1; Ga. L. 1982, p. 3, § 47.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.

47-16-82. Credit for prior service as a warden of a county correctional institution.

Any member who has served as a sheriff for at least 12 years and who served as a warden of a county correctional institution for at least ten years prior to his service as a sheriff may, upon application to the board, receive four years of prior service credit for such service as a warden. (Ga. L. 1972, p. 705, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.

47-16-83. Payment of dues as prerequisite to credit for service on and after January 1, 1961.

No credit for any type of service after and including January 1, 1961, shall be given any member unless regular monthly dues shall have been paid therefor as provided for and required by this chapter. (Ga. L. 1963, p. 630, § 16.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1192 et seq.

47-16-84. Members appointed to fill anticipated vacancies in office of sheriff prior to becoming members.

(a) Anything in this chapter to the contrary notwithstanding, any member who, prior to becoming a member, was appointed to fill an anticipated vacancy in the office of sheriff and who served in that capacity shall be eligible for and, upon application, shall receive service credit for such service.

(b) Any such member shall give written notice to the secretary-treasurer of his claim for credit for such service, together with an amendment to his application for membership, in such form as may be approved by the board. The amendment shall list all such periods of service for which he intends to claim credit as a basis for his future retirement. The notice and amendment shall be filed prior to August 31, 1992, or within the first 30 days of any new term of office of such member.

(c) At the time such member gives written notification to the secretary-treasurer, such member must also tender payment of all amounts due under paragraph (5) of Code Section 47-16-40 for the service listed in the amendment to his application for membership, together with interest

on such amounts at 8 percent per annum from the date of acceptance of his original membership.

(d) Service credit granted pursuant to this Code section shall be deemed to be service as a qualified and commissioned sheriff of a county in the State of Georgia for purposes of eligibility for retirement benefits provided in Code Section 47-16-100; provided, however, that for purposes of such Code section, such service shall be deemed performed after July 1, 1988. (Code 1981, § 47-16-84, enacted by Ga. L. 1992, p. 2523, § 1.)

ARTICLE 6

RETIREMENT BENEFITS AND DEATH BENEFITS

47-16-100. Eligibility for retirement benefits.

In order for a member to be eligible to receive retirement benefits under this chapter, he must meet the following requirements:

(1) The member must have served a minimum of at least four years as a qualified and commissioned sheriff of a county in the State of Georgia during which time the member served as sheriff of the superior court of that county after and including January 1, 1961; provided, however, as applied to any person first or again becoming a sheriff and a member on or after July 1, 1988, the member must have served a minimum of at least eight years as a qualified and commissioned sheriff of a county as provided in this paragraph;

(2) The member must have paid dues as required by this chapter;

(3) He must have reached the age of 55 years, provided that any member who is otherwise eligible to receive retirement benefits except for his having reached the age of 60 years shall, from and after April 1, 1973, be eligible to receive retirement benefits upon reaching the age of 55 years, even though he may have ceased to hold the office of sheriff;

(4) He must have terminated his official capacity and service as a sheriff;

(5) He must have filed and received approval of such application for retirement benefits as may be required by the board. The application shall be filed with the secretary-treasurer within a period of 90 days, or as soon thereafter as possible, after reaching 55 years of age or after termination of his official capacity and service as a sheriff, whichever is the latter date; and

(6) He must have fully complied with all mandatory provisions of this chapter and rules and regulations adopted by the board. (Ga. L. 1963, p. 630, § 17; Ga. L. 1972, p. 705, §§ 1, 3; Ga. L. 1973, p. 892, § 1; Ga. L.

1983, p. 1185, § 4; Ga. L. 1988, p. 352, § 2; Ga. L. 1990, p. 315, § 3; Ga. L. 1994, p. 325, § 3.)

Administrative rules and regulations. — Administrative Rules, Official Compilation of the Rules and Regulations of the State of

Georgia, Sheriffs' Retirement Fund of Georgia, Chapter 513-13-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1175, 1192 et seq.

C.J.S. — 80 C.J.S., Sheriffs and Constables, § 470 et seq.

47-16-101. Retirement benefit options; failure of member to select an option; effect of changes in retirement benefits and options; change of option after receipt of payments.

(a) At the time a member becomes eligible for retirement benefits, he or she shall choose one of three payment options for retirement benefits. The member must indicate his or her choice of payment options upon the application for retirement benefits filed with the secretary-treasurer. Upon approval of the member's application by the board, such member shall be paid retirement benefits in the form of a monthly sum of money determined in accordance with the option he or she has selected. The three payment options are as follows:

(1) Option One shall be known as a "single life annuity" and shall provide retirement benefits for the life of the member only. If the member has no more than four years of service credited to such member under this chapter, the member shall be paid a benefit of \$380.00 per month until the member's death. If the member has more than four years credited to such member under the provisions of this chapter, such member shall be paid a benefit of \$380.00 per month, plus \$95.00 per month for each additional year of service so credited to the member. If the member has additional service credit not totaling a full year, the further sum of one-twelfth of the amount paid per month for each additional year of service credit over four years shall be paid for each month of additional service so credited to the member; provided, however, that in no case shall such benefits exceed \$2,850.00 per month; provided, further, that the board of commissioners shall be authorized to increase such benefits by an amount not to exceed 3 percent per annum based on the following factors:

(A) The recommendation of the actuary of the board of commissioners;

(B) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(C) Such other factors as the board deems relevant.

Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board of commissioners shall determine; provided, however, that no such increase shall be made to become effective within six months of the effective date of any increase in the maximum retirement benefit granted by the General Assembly through amendment of this Code section;

(2) Option Two shall be known as a “100 percent joint life annuity” and shall provide retirement benefits for the life of either the member or his or her spouse, whichever is the survivor. The monthly amount to be paid under this option shall be based on the member’s age and that of his or her spouse at the member’s retirement and shall be the actuarial equivalent of the monthly retirement payment which would have been paid to the member under Option One. Actuarial equivalents shall be computed using a current and accurate mortality table adopted by the board; and

(3) Option Three shall be known as the “50 percent contingency life annuity” and shall provide for payment of a 50 percent benefit for the life of the surviving spouse. The amount to be paid under this option shall be based on the member’s age and that of his or her spouse at the member’s retirement and shall be computed so as to be actuarially equivalent to the monthly benefit which would have been paid to the member under Option One. Actuarial equivalents shall be computed using a current and accurate mortality table adopted by the board. When a retired member has elected Option Two or Option Three, in the event the spouse predeceases the retired member, the monthly retirement benefit payable to the retired member after the death of the spouse shall be increased to the monthly retirement benefit which the retired member would have been entitled to receive under Option One. In the event any such retired member remarries or has remarried after the death of the former spouse, the retired member may elect to begin receiving the applicable reduced retirement benefit of equivalent actuarial value and reestablish on behalf of the new spouse the same option which was applicable to the deceased former spouse, but such option on behalf of the new spouse may not be reestablished until one year after the date of remarriage or until a child of the remarried couple is born, whichever is earlier. Such actuarial equivalence shall be based on the age of the retired member and the age of the retired member’s new spouse at the time of such election and shall be computed on the Mortality Table GA51, with projection, using interest at 6 percent per annum, with a five-year age setback for females and monthly payment annuity functions.

(b) Benefits payable to the spouse of a deceased member shall be payable for only so long as such spouse remains the widow or widower of such deceased member and, should such spouse remarry, any benefits payable to such spouse shall cease as of the date of remarriage.

(c) Any provisions of this chapter to the contrary notwithstanding, \$20.00 shall be deducted from the monthly retirement benefits of the member or the monthly retirement benefits under Option Two or Three to the spouse of the member when the member has been credited with any period of service under this chapter which was performed prior to January 1, 1961, and for which dues shall not have been paid by the member, until a total sum of \$20.00 for every month of service prior to January 1, 1961, so credited to the member shall have been withheld, or until dues have been paid or withheld for a maximum of 25 years, or until the death of the member and his or her spouse who is receiving benefits, whichever may occur first.

(d) In the event any member with a spouse then living is unable to choose one of the three option payments, to complete and file an application for retirement benefits with the secretary-treasurer, or to obtain the approval of the board because of his or her death, mental incompetency, or other providential cause, but the member is otherwise eligible to receive retirement benefits except for his or her having been prevented, Option Two shall be effective, and retirement benefits shall be paid in accordance with that option.

(e) The options under this Code section and the increase in the amounts to be paid as retirement benefits pursuant to said options shall become effective and apply from and after May 1, 1979. Those members and persons already receiving retirement benefits which were computed and determined at a time when the options were not available shall not be afforded an opportunity to select an option but shall have their retirement benefits recomputed and determined in accordance with the provisions of Option One, and the increase in benefits shall be paid to such members or persons from and after May 1, 1979. For those members or persons eligible to receive retirement benefits from and after May 1, 1979, their service shall be computed and determined in accordance with the increased retirement benefits in this Code section in accordance with the member's option selected in accordance with the provisions of this Code section and according to the number of years of creditable service credited to such member or person under this Code section, and such member shall be paid the retirement benefits so determined from and after May 1, 1979. For those members or persons already receiving retirement benefits, such members or persons shall be entitled to have their retirement benefits recomputed and determined in accordance with this Code section, and the increase in benefits according to their years of creditable service shall be paid to such members and persons from and after May 1, 1979.

(f) No member shall be allowed to change the retirement options provided in this Code section subsequent to the time that such member receives the first payment under the retirement option originally selected by such member. (Ga. L. 1963, p. 630, § 18; Ga. L. 1972, p. 705, § 4; Ga. L.

1973, p. 1414, § 1; Ga. L. 1974, p. 1194, § 1; Ga. L. 1976, p. 332, §§ 1, 2; Ga. L. 1977, p. 1291, § 1; Ga. L. 1978, p. 1690, §§ 1, 2; Ga. L. 1979, p. 994, §§ 1, 2; Ga. L. 1981, p. 1853, § 1; Ga. L. 1981, p. 1889, § 2; Ga. L. 1983, p. 1185, § 5; Ga. L. 1985, p. 1348, § 1; Ga. L. 1986, p. 604, § 2; Ga. L. 1988, p. 1566, §§ 2, 3; Ga. L. 1990, p. 553, § 1; Ga. L. 1991, p. 130, § 1; Ga. L. 1993, p. 608, § 2; Ga. L. 1994, p. 92, § 1; Ga. L. 1994, p. 325, § 4; Ga. L. 1995, p. 789, § 1; Ga. L. 1996, p. 375, § 1; Ga. L. 1998, p. 155, § 1; Ga. L. 2000, p. 1167, § 2; Ga. L. 2010, p. 1207, §§ 64, 66/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “board of commissioners” for “board of trustees” in the last sentence of paragraph (a)(1), at the end of subparagraph (a)(1)(A), and in the last undesignated paragraph of subsection (a); and substituted “member and,” for “member and” near the end of subsection (b).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and

the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1228 et seq.

C.J.S. — 70 C.J.S., Pensions, § 18.

47-16-102. Death benefits; beneficiaries; procedure for designation of beneficiary to receive such benefits.

In addition to the retirement benefits provided in this chapter, death benefits shall be paid to members in accordance with the following:

- (1) If any member of this fund dies before retirement, whether such member is active or inactive, an amount equal to the total amount which has been paid by such member into the fund as dues shall be paid, without interest, to such member’s surviving spouse, if any, to such member’s named beneficiary, if any, or to such member’s estate, in that order. If any member dies after retirement without having received an amount equal in benefits to the total amount which he has paid into the fund as dues, the difference, without interest, shall be paid to his surviving spouse, if any, to his named beneficiary, if any, or to such member’s estate, in that order;

(2) In addition to the death benefits provided in paragraph (1) of this Code section, upon the death of any inactive member who would otherwise qualify to be carried upon the active membership rolls but for the fact that the member no longer holds the office of sheriff, any member who is receiving retirement benefits, or any member who is otherwise qualified to receive retirement benefits from this fund except that the member has not reached the age of 55 years or has not filed an application or has not been approved for retirement benefits, the sum of \$15,000.00 shall be paid as additional death benefits to the surviving spouse of such member, if any, to the member's named beneficiary, if any, or to the member's estate, in that order. Upon the death of any active member, the sum of \$15,000.00 shall be paid as additional death benefits to the surviving spouse of such member, if any, to the member's named beneficiary, if any, or to the member's estate, in that order;

(3) At the time any member submits his application for membership in this fund, at the time any member submits his application for retirement benefits, and from time to time any member of this fund, whether carried on the active or inactive rolls of this fund, and any person who is receiving retirement benefits from this fund shall be afforded the opportunity to name a designated beneficiary to receive the death benefits provided for in this Code section; provided, however, such named beneficiary shall be entitled to receive such death benefits only in the event such member or person does not leave surviving a spouse at the time of his death. The procedure by which a member or person receiving retirement benefits names a beneficiary to receive the death benefits provided for in this Code section shall be determined and established by the board, which shall have authority to establish forms and procedures for payment of the death benefits; and

(4) Upon the death of an active member before or after the retirement of such member, the surviving spouse of such member shall receive death benefits in the form of an annuity for the life of such spouse, such annuity to be determined and paid under paragraph (2) of subsection (a), subsection (b), and subsection (c) of Code Section 47-16-101 to the same extent as if such member had died while receiving retirement benefits under Option Two; and in the case of the death of an active member who is not already receiving retirement benefits, such annuity shall be determined and based upon the period of creditable service which such member has at the time of his death. Such benefit shall be in addition to benefits under paragraph (2) of this Code section, and in lieu of benefits under paragraph (1) of this Code section. (Ga. L. 1963, p. 630, § 19; Ga. L. 1974, p. 1191, § 1; Ga. L. 1978, p. 904, § 1; Ga. L. 1980, p. 768, § 1; Ga. L. 1981, p. 1853, § 2; Ga. L. 1981, p. 694, § 1; Ga. L. 1983, p. 3, § 36; Ga. L. 1983, p. 1185, § 6; Ga. L. 1985, p. 209, § 1; Ga. L. 1986, p. 607, § 1; Ga. L. 1994, p. 325, § 5; Ga. L. 2008, p. 132, § 1/HB 358; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2008 amendment, effective July 1, 2008, substituted “\$15,000.00” for “\$7,000.00” twice in paragraph (2).

The 2010 amendment, effective July 1, 2010, added “and” at the end of paragraph (3).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retire-

ment system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1222 et seq.

C.J.S. — 70 C.J.S., Pensions, § 18.

47-16-103. Right to withdraw dues; effect of withdrawal on membership and benefits.

(a) Any member may withdraw the total sum which he has paid into the fund as membership dues at any time before retirement or before he begins to draw retirement benefits. No interest shall be paid on amounts so withdrawn.

(b) Membership shall cease upon withdrawal of dues under subsection (a) of this Code section. No person who so withdraws his dues shall be eligible to again become a member or to receive any benefits under this chapter, provided that any prior member who, before January 1, 1982, has withdrawn the total sums which he has paid into the fund may be reinstated as a member by meeting the following requirements:

(1) He may claim credit for all prior service as a sheriff by tendering payment of all dues which he would have paid had he been a member of the fund, together with interest on such amount at 8 percent per annum and such reasonable penalty as may be imposed by the board, provided that in no event shall any sheriff who rejoins the fund under this subsection be permitted to claim credit for any prior service as a peace officer, except sheriff, or as a member of the armed forces of the United States; and

(2) The application for reinstatement is filed with the secretary-treasurer on or before June 30, 1982. (Ga. L. 1963, p. 630, § 15; Ga. L. 1975, p. 823, § 1; Ga. L. 1982, p. 1607, §§ 1, 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1187 et seq.

ARTICLE 7

MISCELLANEOUS PROVISIONS

47-16-120. Vesting of rights to benefits under this chapter.

All rights and benefits under this chapter shall be subject to future legislative change or revision, and no beneficiary shall be deemed to have any vested right to any benefits under this chapter, except for the right of withdrawal and payment to the surviving spouse or the member's estate of the difference between amounts paid and benefits received as set forth in Code Sections 47-16-102 and 47-16-103 and except for retirement benefits under Code Section 47-16-101, after approval of such benefits under Code Section 47-16-100, provided that benefits deemed vested under this Code section shall be subject to reduction under Code Section 47-16-121. (Ga. L. 1963, p. 630, § 21; Ga. L. 1981, p. 694, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1174 et seq. **C.J.S.** — 70 C.J.S., Pensions, § 8.

47-16-121. Reduction of benefits when available funds are actuarially insufficient; resumption of payments; personal liability of board for such reductions.

If the board determines that the funds derived from the sources provided for in this chapter are not actuarially sufficient at any time to enable the board to pay in full each person determined to be entitled to benefits under this chapter and all contingent and other liabilities, then a pro rata percentage of such payments shall be made to each person entitled thereto until the funds are sufficiently replenished to enable the board to resume full payments in accordance with the terms of this chapter. Before resuming such payments in full, all persons who have received reduced payments shall be paid all deficiencies so that they shall have received full payment of their benefits. In no event shall any member of the board be held personally liable to any person for any deficiencies resulting from reduced payments under this Code section. (Ga. L. 1963, p. 630, § 22.)

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1228.

C.J.S. — 70 C.J.S., Pensions, § 8.

47-16-122. Exemption of funds from attachment, garnishment, or judgment; assignability.

None of the funds under this chapter shall be subject to attachment, garnishment, or judgments rendered against the person entitled to receive such funds. Such funds shall not be assignable, but shall be paid to the person determined to be entitled to receive them under this chapter. (Ga. L. 1963, p. 630, § 20.)

47-16-123. Exemptions of moneys and rights accruing under this chapter from taxation.

The right to any pension, annuity, allowance, or benefit; the right to the return of contributions; a pension, annuity, allowance, or benefit itself; any optional benefit; any other right accrued or accruing to any person under this chapter; and any moneys under this chapter shall be exempt from any tax imposed by this state or any county, municipality, or other political subdivision, except as provided in Code Section 48-7-27. (Code 1981, § 47-16-123, enacted by Ga. L. 1983, p. 1185, § 7; Ga. L. 2000, p. 1449, § 8.)

CHAPTER 17

PEACE OFFICERS' ANNUITY AND BENEFIT FUND

Article 1		Sec.	
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47-17-81.	Eligibility for disability benefits; periodic medical examination; termination of disability benefits; application; hearings; powers of hearing officer; appeal.	47-17-101.	Vesting of rights under this chapter.
47-17-82.	Designation of beneficiary to receive survivors benefits; amount of survivors benefits; provisions for payment of survivors benefits.	47-17-102.	Reduction of benefits upon determination that available funds are insufficient; liability of members of the board for such reductions.
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JUDICIAL DECISIONS

Constitutionality. — Ga. L. 1950, p. 50 (see O.C.G.A. Ch. 17, T. 47) is not in violation of Ga. Const. 1976, Art. I, Sec. II, Para. I or III (see Ga. Const. 1983, Art. I, Sec. I, Para. II and Art. I, Sec. II, Para. I) on the ground that the public interest is affected, in that prosecutions will be instituted for the sole purpose of building up this fund. There is no merit in this contention for the reason that the public officers are presumed to do their duty. *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950).

Ga. L. 1950, p. 50 (see O.C.G.A. Ch. 17, T. 50) is not in violation of Ga. Const. 1976, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. III, Sec. VI, Para. VI) relating to gratuities. *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950).

Cited in *McCallum v. Bryan*, 213 Ga. 669, 100 S.E.2d 916 (1957); *Crow v. McCallum*, 215 Ga. 692, 113 S.E.2d 203 (1960).

OPINIONS OF THE ATTORNEY GENERAL

Parole review officers employed by the State Board of Pardons and Paroles are entitled to membership in the Peace Officers' Annuity and Benefit Fund. 1975 Op. Att'y Gen. No. U75-30.

County firefighters and deputy sheriffs are not prohibited from simultaneously be-

longing to both the county retirement system and either the Peace Officers' Annuity and Benefit Fund or the Georgia Firemen's Pension Fund. 1975 Op. Att'y Gen. No. U75-77.

RESEARCH REFERENCES

ALR. — Statute of limitations in respect of action or proceeding to establish right to, or recovery of benefits of, pension, 136 ALR 809.

Reasonableness of classification, as regards beneficiaries, by statute providing for retirement fund or pension for public officers or employees, 163 ALR 870.

What constitutes “salary,” “wages,” “pay,” or the like, within pension law basing benefits thereon, 14 ALR2d 634.

Gift to or for employees’ pension fund as valid charitable gift or trust, 28 ALR2d 428.

Vested right of pensioner to pension, 52 ALR2d 437.

Unemployment compensation: eligibility of employee laid off according to employer’s mandatory retirement plan, 50 ALR3d 880.

Right to unemployment compensation as affected by receipt of pension, 56 ALR3d 520.

ARTICLE 1

GENERAL PROVISIONS

47-17-1. Definitions.

As used in this chapter, the term:

(1) “Board” means the Board of Commissioners of the Peace Officers’ Annuity and Benefit Fund.

(1.1) “Creditable service” means approved prior service plus membership service.

(2) “Fund” means the Peace Officers’ Annuity and Benefit Fund.

(3) “Income” means any and all income received by a peace officer for services rendered, whether such income is in the form of salary, fees, subsistence allowance or other type of allowance, or any combination thereof.

(4) “Member” means a member of the Peace Officers’ Annuity and Benefit Fund.

(4.1) “Membership service” means service which is rendered by an employee while he or she is a member of the fund and for which credit is allowable under this chapter.

(5) “Peace officer” means:

(A) Any peace officer who is employed by this state or any municipality, county, or other political subdivision thereof who is required by the terms of such peace officer’s employment, whether by election or appointment, to give such peace officer’s full time to the preservation of public order, the protection of life and property, or the detection of crime in this state or any municipality, county, or other political subdivision thereof and who is required by the terms of such peace officer’s employment to comply with the requirements of the “Georgia

Peace Officer Standards and Training Act” contained in Chapter 8 of Title 35, provided that, for the purposes of this chapter, any deputy sheriff employed as such by a sheriff of this state shall be deemed to be employed by the county in which such sheriff serves;

(B) Any warden or correction officer of state or county correctional institutions and any warden or correction officer of municipal correctional institutions of a municipality having a population of 70,000 or more according to the United States decennial census of 1970 or any future such census who is required by the terms of his or her employment as such warden or correction officer to give his or her full time to his or her job as such warden or correction officer; and any warden or correction officer of a municipal correctional institution who on or before October 1, 1962, pays dues for prior service shall be deemed to have been a member for such periods and shall be entitled to all the rights and benefits to which other members during such periods are entitled, provided that any such warden or correction officer as provided in this subparagraph is required by the terms of his or her employment to comply with the requirements of the “Georgia Peace Officer Standards and Training Act” contained in Chapter 8 of Title 35;

(C) All employees of the Peace Officers’ Annuity and Benefit Fund who are required by the terms of their employment to devote their full time to such job; and any such full-time employee who on or before October 1, 1962, paid dues for prior service shall be deemed to have been a member for such periods and shall be entitled to all the rights and benefits to which other members are entitled;

(D) Any parole officers who are required by the terms of their employment to devote full time to their job;

(E) Any law enforcement employee of the Alcohol and Tobacco Tax Unit of the Department of Revenue who is required by the terms of his or her employment to devote his or her full time to his or her job as a law enforcer, and any supervisor of such employees who, himself or herself, is assigned to the Alcohol and Tobacco Tax Unit and who is required by the terms of his or her employment to have arrest powers and to enforce the alcohol and tobacco tax laws;

(F) Any person employed by the Department of Transportation who is designated by the commissioner of transportation as an enforcement officer pursuant to Code Section 32-6-29, provided that such enforcement officers shall be entitled to creditable service toward retirement only for membership service rendered after April 5, 1978, and only for membership service which is rendered in such capacity prior to July 1, 2001;

(G) Any full-time identification technician or identification supervisor employed by this state, or any subdivision or municipality thereof,

whose duties include the investigation and detection of crime or whose duties are supervisory over those identification technicians whose duties include the investigation and detection of crime in this state, and who has been considered a member of the Peace Officers' Annuity and Benefit Fund, and paid dues thereto, at any time on or before July 1, 1981; and such identification technicians and identification supervisors shall be deemed to have been members for such prior period of service that dues were paid and shall be entitled to all rights and benefits to which other members are entitled;

(H) Reserved;

(I) Persons in the categories listed below who are required, as a condition necessary to carry out their duties, to be certified as peace officers pursuant to the provisions of Chapter 8 of Title 35, known as the "Georgia Peace Officer Standards and Training Act":

(i) Persons employed by the Department of Juvenile Justice who have been designated by the commissioner of juvenile justice to investigate and apprehend delinquent and unruly children who have escaped from an institution or facility or have broken their conditions of supervision; any employee of the Department of Juvenile Justice whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent and unruly children in its institutions, facilities, or programs, or who is a line supervisor of any such employee, provided that the powers of a peace officer have been conferred upon such person pursuant to Chapter 4A of Title 49;

(ii) Narcotics agents retained by the director of the Georgia Bureau of Investigation pursuant to the provisions of Code Section 35-3-9;

(iii) Investigators employed by the Secretary of State as securities investigators pursuant to the provisions of Code Section 10-5-10;

(iv) Investigators employed by the Secretary of State as investigators for the professional licensing boards pursuant to the provisions of Code Section 43-1-5;

(v) Persons employed by the Department of Driver Services to whom the commissioner of driver services has delegated law enforcement powers; provided, however, that no such person shall be entitled to obtain any prior creditable service other than actual membership service; and

(vi) Persons employed by the Georgia Composite Medical Board as investigators pursuant to subsection (e) of Code Section 43-34-24.1;

(J) Any person who was a member of the fund pursuant to the definitions contained in subparagraphs (A) through (I) of this paragraph and who is subsequently promoted to a position of similar duties but broader supervisory duties, if such person's new position requires him or her to comply with the standards contained in Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," and such person retains his or her powers of arrest; and

(K) Any employee of the Department of Corrections whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of inmates and detainees or who is a line supervisor of any such employee, provided that all such persons are required to comply with the requirements of Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," in order to hold their positions and in addition have been conferred with the powers of a police officer pursuant to Code Section 42-5-35.

(6) "Service," as used to determine the amount of annuities or benefits due any beneficiary under this chapter, means the total number of years in the aggregate actually served by a peace officer, computed from the date such peace officer began his service as a peace officer. (Ga. L. 1950, p. 50, § 8; Ga. L. 1951, p. 472, § 2; Ga. L. 1956, p. 280, § 7; Ga. L. 1958, p. 341, § 3; Ga. L. 1962, p. 39, § 3; Ga. L. 1970, p. 199, § 1; Ga. L. 1973, p. 63, § 2; Ga. L. 1974, p. 1201, § 1; Ga. L. 1978, p. 1921, § 1; Ga. L. 1981, p. 710, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1987, p. 1062, § 1; Ga. L. 1988, p. 1479, § 1; Ga. L. 1989, p. 228, § 1; Ga. L. 1990, p. 540, § 1; Ga. L. 1992, p. 477, § 1; Ga. L. 1992, p. 1983, § 23; Ga. L. 1994, p. 320, § 1; Ga. L. 1994, p. 776, §§ 1, 2; Ga. L. 1995, p. 27, § 1; Ga. L. 1996, p. 381, § 1; Ga. L. 1996, p. 950, § 8; Ga. L. 1997, p. 1453, §§ 1, 2; Ga. L. 1998, p. 165, § 1; Ga. L. 2000, p. 1449, § 9; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 440, § 1; Ga. L. 2008, p. 145, § 1/HB 732; Ga. L. 2009, p. 368, § 1/SB 48; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2008 amendment, effective July 1, 2008, in subdivision (5)(I)(iv), deleted "and" at the end; in subdivision (5)(I)(v), added "and" at the end; and added subdivision (5)(I)(vi).

The 2009 amendment, effective April 30, 2009, part of an Act to revise, modernize, and correct this title, in division (5)(I)(v), substituted "Department of Driver Services" for "Department of Motor Vehicle Safety" and substituted "commissioner of driver services" for "commissioner of motor vehicle safety".

The 2010 amendment, effective July 1, 2010, substituted "Georgia Composite Med-

ical Board" for "Composite State Board of Medical Examiners" in division (5)(I)(vi).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, in subdivision (5)(I)(i), "Juvenile Justice" was substituted for "Children and Youth Services" in two places and "juvenile justice" was substituted for "children and youth services".

Editor's notes. — Ga. L. 2009, p. 859, § 1, effective July 1, 2009, redesignated former Code Section 43-34-24.1, referred to in subdivision (5)(I)(vi) of this Code section, as present Code Section 43-34-6.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The

intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise cov-

ered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

JUDICIAL DECISIONS

In determining whether a person is a "peace officer" as contemplated by this statute, the court has stressed the duties which the law imposes upon the person. *Fleming v. Maddox*, 225 Ga. 737, 171 S.E.2d 276 (1969) (see O.C.G.A. § 47-17-1).

In determining the question of whether or not a party is a peace officer authorizing the party's membership in the fund, the party's authority to act as a peace officer "must be found in some public law." *Fleming v. Maddox*, 225 Ga. 737, 171 S.E.2d 276 (1969).

Party's classification by the personnel board as a civilian employee, the party's membership in the city's general pension fund, and the fact that the party does not wear a uniform or receive a uniform allowance are immaterial in determining whether the party is a "peace officer" within the statutory definition. *Fleming v. Maddox*, 225 Ga. 737, 171 S.E.2d 276 (1969).

County work camp guards are "peace officers." — County work camp guards may be "peace officers" within the meaning of O.C.G.A. § 47-17-1 whether or not the guards carry weapons during working hours. *Priest v. Peace Officers' Annuity & Benefit Fund*, 248 Ga. 603, 284 S.E.2d 257 (1981).

Custodial and supervisory duties of county work camp employee over inmates qualify employee as a "guard," hence a "peace officer" under O.C.G.A. § 47-17-1 whether or not the employee carried weapons during working hours. *Berry v. Peace Officers' Annuity & Benefit Fund*, 248 Ga. 810, 286 S.E.2d 28 (1982).

"Public order" means the tranquility and security which every person feels under the

protection of the law, a breach of which is an invasion of the protection which the law affords. *Board of Comm'rs v. Clay*, 214 Ga. 70, 102 S.E.2d 575 (1958); *Fleming v. Maddox*, 225 Ga. 737, 171 S.E.2d 276 (1969).

To preserve the public peace means to secure that quiet and freedom from disturbance which is guaranteed by the law. *Board of Comm'rs v. Clay*, 214 Ga. 70, 102 S.E.2d 575 (1958); *Fleming v. Maddox*, 225 Ga. 737, 171 S.E.2d 276 (1969).

Rights of "life" and "property" embrace every right of the citizen which the law protects, and includes all liberties, whether personal, civil or political. *Board of Comm'rs v. Clay*, 214 Ga. 70, 102 S.E.2d 575 (1958); *Fleming v. Maddox*, 225 Ga. 737, 171 S.E.2d 276 (1969).

"The detection of crime" means the investigation and discovery of violators of all public laws. *Fleming v. Maddox*, 225 Ga. 737, 171 S.E.2d 276 (1969).

Deputy sheriff paid by corporation not "peace officer." — One who was appointed deputy sheriff because a corporation desired additional law enforcement protection, whose regular salary was paid by the corporation and who received fees amounting from \$75.00 to \$150.00 per year from the sheriff, was not a "peace officer" within the meaning of this statute. *Vandiver v. Carlin*, 217 Ga. 515, 123 S.E.2d 548 (1962) (see O.C.G.A. § 47-17-1).

Inspectors of motor vehicles for hire, employed by the Georgia Public Service Commission, are not "peace officers" as defined by this statute, so as to make the inspectors eligible for membership in the

Peace Officers' Annuity and Benefit Fund. Board of Comm'rs v. Clay, 214 Ga. 70, 102 S.E.2d 575 (1958) (see O.C.G.A. § 47-17-1).

Cited in McCallum v. Almand, 213 Ga. 701, 100 S.E.2d 924 (1957); Griffin v. Bass,

96 Ga. App. 892, 102 S.E.2d 64 (1958); McCallum v. Quarles, 214 Ga. 192, 104 S.E.2d 105 (1958); Carter v. Haynes, 228 Ga. 462, 186 S.E.2d 115 (1971); Smith v. Price, 616 F.2d 1371 (5th Cir. 1980).

OPINIONS OF THE ATTORNEY GENERAL

Security officers at Georgia Tech are eligible to be participating members of the Peace Officers' Annuity and Benefit Fund. 1960-61 Op. Att'y Gen. p. 330.

State game protector or deputy state game protector would come within the classification of a "Peace Officer" as defined in this statute. 1950-51 Op. Att'y Gen. p. 91 (see O.C.G.A. § 47-17-1).

Parole review officers employed by the State Board of Pardons and Paroles are entitled to membership in the Peace Officers' Annuity and Benefit Fund. 1975 Op. Att'y Gen. No. U75-30.

Parks Department (now Department of Natural Resources) employees. — Since the peace officer authority of Parks Department (now Department of Natural Resources) employees is limited to enforcing laws on state park property, and since the employees will not be devoting full time to work as general

law enforcement officers, they are not eligible for participation in the Peace Officers' Annuity and Benefit Fund. 1971 Op. Att'y Gen. No. 71-155.

District attorney does not fit under any definition of a law enforcement officer or peace officer in this state. 1980 Op. Att'y Gen. No. U80-33.

Tax collectors and tax commissioners who become ex officio sheriffs under O.C.G.A. § 48-5-137 are not thereby rendered "peace officers" eligible for membership in the Peace Officers' Annuity and Benefit Fund. 1982 Op. Att'y Gen. No. U82-9.

Hospital authority as "employer." — Hospital authority does not satisfy the statutory definition of an "employer" under the Act governing the Peace Officer and Annuity Benefit Fund and therefore, its security personnel are not entitled to membership in that Fund. 1991 Op. Att'y Gen. No. U91-12.

RESEARCH REFERENCES

C.J.S. — 63 C.J.S., Municipal Corporations, § 473. 67 C.J.S., Officers and Public Employees, §§ 8 et seq., 68 et seq. 72 C.J.S.,

Prisons, § 12 et seq. 80 C.J.S., Sheriffs and Constables, § 1 et seq.

ARTICLE 2

ADMINISTRATION AND MANAGEMENT OF THE ASSETS OF THE FUND

Administrative rules and regulations. — Rules of General Applicability, Official Compilation of the Rules and Regulations of the State of Georgia, District Attorneys' Retirement Fund of Georgia, Chapter 513-11-1.

Rules of General Applicability, Official Compilation of the Rules and Regulations of

the State of Georgia, Sheriffs' Retirement Fund of Georgia, Chapter 513-13-1.

Administrative Rules, Official Compilation of the Rules and Regulations of the State of Georgia, Peace Officers' Annuity and Benefit Fund of Georgia, Chapter 513-14-1.

47-17-20. Membership of the board; manner of appointment; filling of vacancies; reimbursement of expenses; election of officers; quorum.

(a) In order to carry out this chapter and to perform the duties fixed in it, there is created the Board of Commissioners of the Peace Officers' Annuity and Benefit Fund. The board shall be composed of six members, as follows:

- (1) The Governor or the Governor's designee;
- (2) An appointee of the Governor who is not the Attorney General;
- (3) The Commissioner of Insurance or the Commissioner's designee;
- (4) A peace officer actively employed by an agency of the state or a retired peace officer who was employed by an agency of the state upon retirement;
- (5) A peace officer actively employed by a county or a retired peace officer who was employed by a county upon retirement; and
- (6) A peace officer actively employed by a municipality or a retired peace officer who was employed by a municipality upon retirement.

(b) Each of the members provided for under paragraphs (4), (5), and (6) of subsection (a) of this Code section shall be an active member of the fund or a retired peace officer who is a beneficiary of the fund. Each such member shall be appointed by the Governor to take office on July 1, 1984. The initial member appointed pursuant to paragraph (4) of subsection (a) of this Code section shall be the successor to incumbent board member, Sergeant Robert Brown, whose regular term of office expires October 31, 1984, and the term of said incumbent member is shortened to expire on June 30, 1984; and the initial term of the successor appointed by the Governor shall be one year. The initial member appointed pursuant to paragraph (5) of subsection (a) of this Code section shall be the successor to incumbent board member, Captain Raymond Purvis, whose regular term of office expires on October 31, 1985, and the term of said incumbent member is shortened to expire on June 30, 1984; and the initial term of the successor appointed by the Governor shall be two years. The initial member appointed pursuant to paragraph (6) of subsection (a) of this Code section shall be the successor to incumbent board member, Sergeant Terry McAfee, whose regular term of office expires October 31, 1984, and the term of said incumbent member is shortened to expire on June 30, 1984; and the initial term of the successor appointed by the Governor shall be three years. Thereafter, successors to such members shall be appointed by the Governor to take office upon the expiration of the respective terms of office for terms of three years. All such members shall serve until their successors are appointed and qualified.

(c) If a vacancy occurs in a position on the board held by one of the members appointed pursuant to subsection (b) of this Code section, the Governor shall fill such vacancy for the unexpired term within 30 days after the date the vacancy occurred. The members of the board shall receive the same expense allowance as that received by members of the General Assembly and the same mileage allowance for the use of a personal automobile as that received by other state officials or employees or a travel allowance of actual transportation costs if traveling by public carrier within the state. Any board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of the member's duties as a board member. For each day's service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the same mileage allowance for the use of a personal automobile as that received by other state officials and employees or a travel allowance of actual transportation costs if traveling by public carrier or by rental motor vehicle. The board, by regulation, shall provide for the submission and approval of expense vouchers in conformity with the requirements of this subsection.

(d) The board shall elect from its members a chairman and a vice-chairman.

(e) A majority of the members of the board shall constitute a quorum for the purpose of transacting all business that may come before the board.

(f) The executive committee of the Peace Officers' Association of Georgia shall submit to the Governor a list of three names for each person to be appointed by the Governor pursuant to subsection (b) of this Code section as a member of the board. In making appointments pursuant to subsection (b) of this Code section, the Governor may consider the names submitted by the executive committee, but it is specifically provided that the appointments shall be at the sole discretion of the Governor, and the Governor shall not be required to choose any appointee from names submitted by the executive committee. (Ga. L. 1950, p. 50, §§ 1, 2; Ga. L. 1956, p. 280, § 1; Ga. L. 1958, p. 341, § 1; Ga. L. 1959, p. 330, § 1; Ga. L. 1962, p. 39, § 1; Ga. L. 1984, p. 926, § 1; Ga. L. 1988, p. 426, § 1.)

Cross references. — Expense allowances for General Assembly members, § 28-1-8.

Editor's notes. — Ga. L. 1984, p. 926, § 2, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor [March 28,

1984] or upon its otherwise becoming law for the purpose of allowing the Governor to consider appointments pursuant to said quoted Code Section 47-17-20 of Section 1 of this Act. This Act shall become effective for all purposes on July 1, 1984."

OPINIONS OF THE ATTORNEY GENERAL

Purchase of real estate for construction of offices. — Peace Officers' Annuity and Benefit Fund Commissioners have legal author-

ity to construct an office building for use by the fund, and for lease or rent to other occupants. The Peace Officers' Annuity and

Benefit Fund Commissioners are required to submit an application to purchase the real estate contemplated to the Georgia Real

Estate Investment Board (now abolished) for the Board's approval, disapproval, or rejection. 1962 Op. Att'y Gen. p. 369.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313.

47-17-21. Creation of the office of secretary-treasurer; duties and compensation; quarterly report and accounting to the board; performance bond.

(a) There is created the office of secretary-treasurer of the Peace Officers' Annuity and Benefit Fund. The secretary-treasurer shall be elected by the board and shall serve at its pleasure. His compensation shall be fixed by the board. He shall perform the duties provided for in this chapter and such other duties and services as the board may direct.

(b) The secretary-treasurer shall give a good and sufficient surety bond in such an amount as may be determined by the board, and such surety bond shall be conditioned upon the proper and faithful performance of his duties as secretary-treasurer.

(c) The secretary-treasurer shall make quarterly reports to the board showing the total amount of money in his hands at the time of making such report and also showing a full accounting of receipts and expenditures since his last quarterly report. (Ga. L. 1950, p. 50, § 3; Ga. L. 1956, p. 280, § 2.)

JUDICIAL DECISIONS

Cited in *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950).

47-17-22. Powers and duties of the board generally.

The board is given the following powers and duties:

(1) To provide for the collection of all moneys provided for in this chapter;

(2) To provide for payment of all annuities and benefits under this chapter;

(3) To provide for and maintain all necessary administrative facilities and personnel;

(4) To provide for payment of all administrative salaries, fees, and expenses;

- (5) To hear and determine applications for membership in this fund according to the terms of this chapter;
- (6) To hear and determine applications for retirement, disability, and death benefits according to the terms of this chapter;
- (7) To make rules, regulations, and requirements consistent with this chapter for determining eligibility of members for disability, death, and retirement benefits;
- (8) To delegate its authority to invest funds to one or more members of the board;
- (9) To provide for the keeping of minutes and records of all meetings and proceedings of the board, including all rules, regulations, delegations, and requirements passed upon by the board;
- (10) To delegate any and all duties and authorities granted in this Code section to the secretary-treasurer under such conditions as may be deemed proper by the board, provided that the board shall at all times hear and determine any matter arising under this chapter if it so desires, if such matter is referred to it by the secretary-treasurer, or if such matter is appealed to the board by any person affected by a decision made by the secretary-treasurer;
- (11) To exercise such other powers, not inconsistent with this chapter, as are necessary for the proper administration of this chapter; and
- (12) To correct errors in the records of the fund in those instances in which an error results in a member or beneficiary receiving more or less than he or she would have been entitled to receive had the records been correct and to adjust the payments, as far as is practicable, in such a manner that the member or beneficiary is paid the actuarial equivalent of the benefit to which he or she is actually entitled. (Ga. L. 1950, p. 50, § 5; Ga. L. 1951, p. 472, § 1; Ga. L. 1956, p. 280, § 5; Ga. L. 1958, p. 341, § 2; Ga. L. 1962, p. 39, § 2; Ga. L. 1965, p. 593, § 1; Ga. L. 1969, p. 74, § 1; Ga. L. 1973, p. 63, § 1; Ga. L. 1991, p. 786, § 1.)

JUDICIAL DECISIONS

Cited in *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950).

OPINIONS OF THE ATTORNEY GENERAL

Board is trustee. — Board of Commissioners of Peace Officers' Annuity and Benefit Fund is a trustee and not a state agency. 1950-51 Op. Att'y Gen. p. 133.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 311 et seq.

47-17-23. Special account for funds; investment powers of board; gifts, grants, and bequests.

(a) The board shall have such control of the funds provided for in this chapter as is not inconsistent with this chapter and other general laws. All funds received by the board shall be deposited in a special account in the name of the Peace Officers' Annuity and Benefit Fund. The board shall have the authority to expend such funds in accordance with this chapter.

(b) The board shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the "Public Retirement Systems Investment Authority Law." Subject to such terms, conditions, limitations, and restrictions, the board shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds are invested, including the proceeds of any investments and any money belonging to the fund.

(c) The board may take, by gift, grant, devise, or bequest, any money, real or personal property, or any other thing of value and hold or invest it for the uses and purposes of the fund in accordance with this chapter.

(d) The board is authorized to employ agents, including, but not limited to, banks or trust departments thereof, and to enter into contracts with such agents for their services as investment advisers and counselors, in making recommendations for investments and in making investments if the board so authorizes. (Ga. L. 1950, p. 50, § 4; Ga. L. 1955, p. 387, § 1; Ga. L. 1956, p. 280, § 4; Ga. L. 1963, p. 262, § 1; Ga. L. 1987, p. 473, § 1; Ga. L. 1997, p. 966, § 4; Ga. L. 2000, p. 2, § 12; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted "advisers" for "advisors" in the middle of subsection (d).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

JUDICIAL DECISIONS

Cited in *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950); *Carter v. Haynes*, 228 Ga. 462, 186 S.E.2d 115 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313.

47-17-24. Duty of the board to keep permanent records of annuities and benefits granted; contents, preservation, and transfer of records, papers, and other data.

It shall be the duty of the board to keep permanent records of all its actions in granting annuities or benefits. Such records shall give the name of the recipient, the date of the beginning of the service of the involved peace officer, the date of such officer's incapacity, retirement, or death, the reason therefor, and such other information as the board shall desire. All records, papers, and other data shall be carefully preserved and turned over to the succeeding members of the board. (Ga. L. 1950, p. 50, § 6; Ga. L. 1956, p. 280, § 6.)

47-17-25. Duty of the state auditor to make an annual audit and report; audit upon request of the board; contents of annual report.

The state auditor is authorized and directed to make an annual audit of the acts and doings of the board and to make a complete report of the same to the General Assembly. The state auditor shall not be required to distribute copies of the report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which he or she deems to be most effective and efficient. The report shall disclose all moneys received by the board and all its expenditures including administrative expenses and payments made as annuities and benefits. The state auditor shall also make an audit of affairs of the board at any time he or she is requested to do so by a majority of the board. (Ga. L. 1950, p. 50, § 15; Ga. L. 2005, p. 1036, § 36/SB 49.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 247.

47-17-26. Methods of providing increases in maximum benefit payable under Article 6 of this chapter.

(a) Subject to the terms and limitations of this Code section, the board of commissioners is authorized to adopt from time to time a method or

methods of providing for increases in the maximum monthly retirement benefit payable under Article 6 of this chapter for persons theretofore or thereafter retiring under this chapter. Such method shall be based upon:

- (1) The recommendation of the actuary of the board of commissioners;
- (2) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and
- (3) Such other factors as the board deems relevant.

Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board of commissioners shall determine.

(b) An initial increase may be granted pursuant to subsection (a) of this Code section to become effective on July 1, 1993, not to exceed 3 percent of the maximum monthly retirement benefit then in effect. Thereafter, such increases may be authorized effective as of January 1 and July 1 of each year; provided, however, that no such increase shall exceed 1 1/2 percent of the maximum monthly retirement benefit then in effect.

(c) No increase shall be made pursuant to subsection (a) of this Code section to become effective within six months of the effective date of any increase in the maximum retirement benefit granted by the General Assembly through amendment of Code Section 47-17-80. (Code 1981, § 47-17-26, enacted by Ga. L. 1993, p. 607, § 1; Ga. L. 2010, p. 1207, § 66/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “board of commissioners” for “board of trustees” three times in subsection (a).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any

way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

ARTICLE 3

MEMBERSHIP IN AND CONTRIBUTIONS TO THE FUND

Administrative rules and regulations. — Administrative Rules, Official Compilation of the Rules and Regulations of the State of

Georgia, Sheriffs’ Retirement Fund of Georgia, Chapter 513-13-2.
Administrative Rules, Official Compila-

tion of the Rules and Regulations of the and Benefit Fund of Georgia, Chapter State of Georgia, Peace Officers' Annuity 513-141.

47-17-40. Application for membership in the fund; credit for prior service.

(a) In order to obtain membership in the fund, a peace officer shall make application to the board upon an application form to be furnished by it for that purpose. It shall be the duty of the employing authority to notify the board within 30 days from the date a peace officer is employed, furnishing the name and mailing address of such peace officer. The board shall furnish an application form to such peace officer within 15 days after such notification. The application form shall be accompanied by such material and information as will enable the peace officer to determine the benefits to be derived by virtue of said peace officer's membership in the fund. An applicant must furnish proof of the date of such applicant's birth, and such proof shall be in such form as shall be required by the board.

(b) Reserved.

(c) In addition to the requirements stated in this Code section, an application for membership shall contain such other information as may be required by the board. (Ga. L. 1950, p. 50, § 9; Ga. L. 1951, p. 472, §§ 3, 3A; Ga. L. 1953, Jan.-Feb. Sess., p. 574, § 1; Ga. L. 1956, p. 280, §§ 3, 8; Ga. L. 1958, p. 341, § 4; Ga. L. 1962, p. 39, § 4; Ga. L. 1965, p. 593, § 2; Ga. L. 1968, p. 536, § 1; Ga. L. 1969, p. 74, § 2; Ga. L. 1979, p. 430, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1988, p. 1067, § 1; Ga. L. 1992, p. 1491, §§ 1, 2; Ga. L. 1993, p. 1000, §§ 1, 2; Ga. L. 1994, p. 320, § 2; Ga. L. 2000, p. 131, § 1.)

JUDICIAL DECISIONS

Cited in *Vandiver v. Manning*, 215 Ga. 874, 114 S.E.2d 121 (1960); *Carter v. Haynes*, 228 Ga. 462, 186 S.E.2d 115 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1618.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 313, 321.

ALR. — Validity, construction, and effect

of provisions, in insurance policies allowing disability or accident benefits, which require insured to submit to physical examination, 5 ALR3d 929.

47-17-41. Retention of membership during absence from employment as a peace officer; credit for such period; payments due from the member for such period.

The board may provide by rule and regulation for the retention of any legally qualified member who has temporarily ceased employment as a peace officer and for credit for such period, provided that an application for retention of membership is submitted not later than 90 days after such

employment has ceased; and provided, further, that he or she shall pay to the fund the amounts required for such period. Such member may obtain one month of such credit for each month of active membership performed after the period of unemployment as a peace officer; provided, however, that not more than 12 months of absence from such employment shall be allowed under this Code section during a member's entire membership in the fund. (Ga. L. 1951, p. 472, § 5; Ga. L. 1956, p. 280, § 13; Ga. L. 1958, p. 341, § 9; Ga. L. 1962, p. 39, § 8; Ga. L. 1963, p. 386, § 4; Ga. L. 2010, p. 909, § 1/HB 974.)

The 2010 amendment, effective July 1, 2010, inserted "or she" in the first sentence and substituted "Such member may obtain one month of such credit for each month of

active membership performed after the period of unemployment as a peace officer; provided, however, that not" for "Not" at the beginning of the second sentence.

JUDICIAL DECISIONS

Cited in *Carter v. Haynes*, 228 Ga. 462, 186 S.E.2d 115 (1971).

47-17-42. Membership of peace officers blinded in the line of duty before creation of the fund; payments required of such peace officers; disability benefits available.

Any other provisions of this chapter to the contrary notwithstanding, any person who was totally blinded in the line of duty as a peace officer prior to the creation of the fund and who has been unable to serve as a peace officer since that injury is authorized to become a member of the fund, regardless of whether such person is now or hereafter a peace officer. If he elects to join the fund, he shall pay into it the amount which he would have paid had he joined the fund upon its creation and continued as a member since that time, which amount shall be determined by the board. Upon such payment he shall be authorized to receive the maximum disability benefits under Code Section 47-17-81 without the necessity of complying with any time limitations contained in that Code section. (Ga. L. 1964, p. 757, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 86, § 1.)

47-17-43. Participation of members in other retirement, annuity, or benefit systems.

Nothing contained in this chapter shall be construed so as to prevent any peace officer who is a member of the fund from belonging to any other retirement, annuity, or benefit system. (Ga. L. 1956, p. 280, § 14.)

RESEARCH REFERENCES

ALR. — Right to compensation under Workmen's Compensation Act as affected by pension, insurance, gratuities, or other benefits derived from the Act itself, 119 ALR 920.

47-17-44. Amount of dues; deadline and minimum period for payments; dues required for credit for service after March 1, 1951; dues required for prior service credit.

(a) Each member shall pay into the fund as dues the sum of \$20.00 per month. Each month's dues shall be paid not later than the tenth day of that month. Each member shall be required to pay such dues for a minimum period of ten years before being eligible to receive the retirement benefits under this chapter, provided that, if such member is eligible to retire under this chapter and so desires, such member may retire, and the board shall deduct such monthly amount from his or her retirement benefits until he or she has paid dues into the fund for a period of ten years.

(b) No member shall receive credit for any service performed after March 1, 1951, unless such member has paid into the fund the amount required for such service. Upon application of any peace officer who applies for membership and who owes dues for service since March 1, 1951, the board may allow and provide for periodic payments of such dues over a period of not more than 36 months immediately subsequent to the date of his or her acceptance as a member.

(c) Except as provided in subsection (d) of this Code section, any member of the fund who has not obtained creditable service for prior service pursuant to the provisions of subsection (a) of Code Section 47-17-70 may obtain such service by tendering to the board an amount equal to the dues at the rate of \$20.00 per month plus 10 percent interest per annum compounded annually from the date the prior service was rendered to the date of payment for all years claimed as prior service; provided, however, that no member shall be allowed to purchase more than a total of five years of such creditable service; provided, further, however, that any member who becomes or again becomes a member of the fund on or after July 1, 1994, must have been an active member of the fund for five years or more to obtain the prior service credit provided for in this subsection.

(d) Any member of the fund who qualifies for membership under the definition contained in subparagraph (J) of paragraph (5) of Code Section 47-17-1 who has not obtained creditable service for prior service pursuant to the provisions of subsection (a) of Code Section 47-17-70 may obtain such service by tendering to the board an amount equal to the dues at the rate of \$20.00 per month plus 10 percent interest per annum compounded annually from the date the prior service was rendered to the date of payment for all years claimed as prior service. (Ga. L. 1950, p. 50, § 9; Ga. L. 1951, p. 472, §§ 2, 3; Ga. L. 1953, Jan.-Feb. Sess., p. 574, § 1; Ga. L. 1956,

p. 280, §§ 5, 7, 8; Ga. L. 1958, p. 341, §§ 2-4; Ga. L. 1962, p. 39, §§ 2-4; Ga. L. 1965, p. 593, §§ 1, 2; Ga. L. 1968, p. 536, § 1; Ga. L. 1969, p. 74, § 1; Ga. L. 1973, p. 63, § 2; Ga. L. 1974, p. 1201, § 1; Ga. L. 1978, p. 1921, § 1; Ga. L. 1984, p. 996, § 1; Ga. L. 1992, p. 1139, § 1; Ga. L. 1994, p. 320, § 3; Ga. L. 1994, p. 776, § 3; Ga. L. 1995, p. 27, § 1; Ga. L. 2003, p. 603, § 1.)

JUDICIAL DECISIONS

Cited in *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950); *Vandiver v. Manning*, 215 Ga. 874, 114 S.E.2d 121 (1960); *Carter v. Haynes*, 228 Ga. 462, 186 S.E.2d 115 (1971).

OPINIONS OF THE ATTORNEY GENERAL

Narcotics agents employed by the Georgia Bureau of Investigation may purchase prior service credit under the Peace Officers and Annuity Benefit Fund, pursuant to Act No. 849, passed in the 1992 General Assembly session, which amended O.C.G.A. § 47-17-44 by rewriting subsection (c). 1992 Op. Att'y Gen. No. 92-18.

RESEARCH REFERENCES

ALR. — Judicial review of decision, on merits, of claim upon public pension fund, 117 ALR 1408.

ARTICLE 4

REVENUES COLLECTED FROM FINES AND FEES

47-17-60. Payments to the fund from fines and bonds collected in criminal and quasi-criminal cases; duty of collecting authority to record and remit sums collected; penalty.

(a) A portion of each fine collected and each bond forfeited and collected in any criminal or quasi-criminal case for violation of state statutes, county ordinances, or municipal ordinances, which case is before any court or tribunal in this state, shall be paid to the secretary-treasurer according to the following schedule:

(1) Three dollars for any fine or bond forfeiture of more than \$4.00, but not more than \$25.00;

(2) Four dollars for any fine or bond forfeiture of more than \$25.00, but not more than \$50.00;

(3) Five dollars for any fine or bond forfeiture of more than \$50.00, but not more than \$100.00;

(4) Five percent of any fine or bond forfeiture of more than \$100.00.

For purposes of determining amounts to be paid to the secretary-treasurer, the amount of the fine or bond collected shall be

deemed to include costs. The amounts provided for shall be paid to the secretary-treasurer before the payment of any costs or any claim whatsoever against such fine or forfeiture. The collecting authority shall pay such amounts to the secretary-treasurer on the first day of the month following that in which they were collected or at such other time as the board may provide. With such payment there shall be filed an acceptable form which shows the number of cases in each of the above categories and the amounts due in each category. It shall be the duty of the collecting authority to keep accurate records of the amounts due the board so that the records may be audited or inspected at any time by any representative of the board under its direction. Sums remitted to the secretary-treasurer under this Code section shall be used as provided for elsewhere in this chapter.

(b) If the collecting authority fails to remit such amounts with an acceptable form properly filled out within 60 days of the date on which such remittal is due, the same shall be delinquent, and there shall be imposed, in addition to the principal amount due, a specific penalty in the amount of 5 percent of the principal amount per month for each month during which the funds continue to be delinquent, provided that such penalty shall not exceed 25 percent of the principal due. In addition to such penalty, interest shall be charged on delinquent amounts at the rate of 6 percent per annum from the date the funds become delinquent until they are paid. All funds due on or before April 1, 1966, and not paid shall be delinquent after the expiration of 60 days from that date. By affirmative vote of all members, the board, upon the payment of the delinquent funds together with interest and for good cause shown, may waive the specific penalty otherwise charged under this subsection. (Ga. L. 1950, p. 50, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 574, § 2; Ga. L. 1956, p. 280, § 9; Ga. L. 1958, p. 341, § 5; Ga. L. 1959, p. 330, § 2; Ga. L. 1966, p. 395, § 1; Ga. L. 1970, p. 93, § 1; Ga. L. 1975, p. 578, § 1; Ga. L. 1987, p. 475, § 1; Ga. L. 1989, p. 225, § 1.)

JUDICIAL DECISIONS

Government instituted for good of whole. — Allocation of a portion of the fines and forfeitures under this statute is not a violation of Ga. Const. 1945, Art. I, Sec. I, Paras. I, II (see Ga. Const. 1983, Art. I, Sec. I, Para. II and Art. I, Sec. II, Para. I) because of the possibility that peace officers will institute prosecutions for the sole purpose of building the fund as public officers are presumed to do their duty. *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950) (see O.C.G.A. § 47-17-60).

Appropriation is constitutional. — Allocation of a portion of the fines and forfeitures under this statute is not an appropriation in violation of Ga. Const. 1945, Art. VII, Sec. V, Para. I (see Ga. Const. 1983, Art. IX, Sec. II,

Para. VIII). *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950) (see O.C.G.A. § 47-17-60).

Unauthorized tax. — Allocation of a portion of the fines and forfeitures under this statute is not an unauthorized tax in violation of Ga. Const. 1945, Art. VII, Sec. II, Para. I (see Ga. Const. 1983, Art. VII, Sec. II, Para. I). *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950) (see O.C.G.A. § 47-17-60).

Contractual relation created by section. — Provisions of this statute, requiring that peace officers pay a defined monthly sum into the fund, create a contractual relation, and the disability and retirement pay provided therein is not a gratuity but is adjusted

compensation for services rendered. *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950) (see O.C.G.A. § 47-17-60).

Cited in *Gay v. McTimer*, 114 Ga. App. 461, 151 S.E.2d 776 (1966); *Carter v. Haynes*,

228 Ga. 462, 186 S.E.2d 115 (1971); *Peace Officers' Annuity & Benefit Fund v. Blocker*, 135 Ga. App. 822, 219 S.E.2d 456 (1975); *Busbee v. Gillis*, 241 Ga. 353, 245 S.E.2d 304 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Payments not “costs.” — As to the Peace Officers' Annuity and Benefit Fund and the Judges of the Probate Courts Retirement Fund, the General Assembly has drawn a plain distinction between court costs and the payments which must be made into those retirement systems. Therefore, payments which are to be made into the Peace Officers' Annuity and Benefit Fund and into the Judges of the Probate Courts Retirement Fund should not be treated as part of court costs. 1972 Op. Att'y Gen. No. 72-29.

Moneys paid whenever costs collected. — Intent of the added phrase “to include costs” in subsection (a) of this statute indicates the moneys are to be paid whenever costs are collected, whether as part of a fine, bond, or as a result of a settlement and nolle prosequi. 1963-65 Op. Att'y Gen. p. 609 (see O.C.G.A. § 47-17-60).

Collection and recording of amounts due. — Collecting officer deducts the amount authorized under this statute of the Peace Officers' Annuity and Benefit Fund before any moneys arising from fines and forfeitures are paid into the fine and forfeiture fund. The money so deducted is to be accurately recorded and transmitted to the treasurer of the Board of Commissioners of the Peace Officers' Annuity and Benefit Fund as provided by law. 1950-51 Op. Att'y Gen. p. 131 (see O.C.G.A. § 47-17-60).

Records of amounts due the Peace Officers' Annuity and Benefit Fund must be kept by the person or authority collecting the money. Normally, this person will be the clerk of the court. 1970 Op. Att'y Gen. No. U70-85.

Payment required even though no police are members. — Law makes no distinction as to any court, and the fact that no police officers in a particular city are members of the fund does not remove the requirement of payment into the fund by any court of such city. 1957 Op. Att'y Gen. p. 229.

Remittances from magistrate courts. — Remittances are required from the magistrate courts to the Sheriffs' Retirement Fund under O.C.G.A. § 47-16-61(b), added in 1986, and will be required for the Peace Officers' Annuity and Benefit Fund as of July 1, 1987 by virtue of Act No. 572 which amends O.C.G.A. § 47-17-60. 1987 Op. Att'y Gen. No. U87-12, supplementing 1986 Op. Att'y Gen. U86-33.

Payments not required for seat belt violation cases. — Amount required to be withheld and paid over to the Peace Officers' Annuity and Benefit Fund is not required to be withheld and paid over in cases involving the failure to wear a seat safety belt under O.C.G.A. § 40-8-76.1(e). 2008 Op. Att'y Gen. No. 2008-4.

47-17-61. Employer contributions by Georgia Composite Medical Board.

The Georgia Composite Medical Board shall pay an employer contribution for each person who becomes a member of the fund pursuant to division (5)(I)(vi) of Code Section 47-17-1. Such contribution shall be the full actuarial cost of the member's participation as calculated by the actuary for the fund and shall be made on a monthly basis. (Code 1981, § 47-17-61, enacted by Ga. L. 2009, p. 824, § 4/HB 487.)

Effective date. — This Code section became effective May 5, 2009.

Cross references. — Georgia Composite Medical Board, Ch. 34, T. 43.

Code Commission notes. — Pursuant to

Code Section 28-9-5, in 2009, “Georgia Composite Medical Board” was substituted for “Composite State Board of Medical Examiners” in this Code section.

ARTICLE 5

SERVICE CREDITABLE TOWARD RETIREMENT

Administrative rules and regulations. — Georgia, Sheriffs' Retirement Fund of Georgia, Administrative Rules, Official Compilation of the Rules and Regulations of the State of Georgia, Chapter 513-13-2.

47-17-70. Prior service credit for members who first apply for membership on or after May 1, 1968; credit for service in the armed forces of the United States.

(a) No peace officer who first makes application for membership in the fund on or after May 1, 1968, shall be given credit for any prior service, and such peace officer shall receive credit only from the date he or she becomes a member of the fund; provided, however, a member may claim a maximum of five years for service as a peace officer prior to such member's joining the fund if such member complies with subsection (c) of Code Section 47-17-44 and remains an active member of the fund for a period of time at least equal to the number of years claimed for prior service; provided, further, that any member defined in subparagraph (J) of paragraph (5) of Code Section 47-17-1 may claim service as a peace officer prior to such member's joining the fund without regard to such five-year limitation if such member complies with subsection (c) of Code Section 47-17-44.

(b) A member who is determined by the board to be in good standing and who enlists in or is drafted into any branch of the armed forces of the United States shall not be required to remit any funds to the board during such period of service and shall receive credit for such service, provided that such member left his work as a peace officer to enter the armed forces of the United States and returned to work as a peace officer within six months after he ceased such service and engaged in no other type work within such six-month period. Such member shall receive one year of creditable service for each year of service in the armed forces of the United States, provided that there shall be a limit of five years of credit for such service. If a member remains in the armed forces of the United States longer than five years, his membership shall be terminated at the end of such five-year period but shall be reinstated if he returns to work as a peace officer within six months after he ceases such service and if he has not engaged in any other type work within such six-month period. (Ga. L. 1951, p. 472, § 5; Ga. L. 1956, p. 280, § 13; Ga. L. 1958, p. 341, § 9; Ga. L. 1962, p. 39, § 8; Ga. L. 1963, p. 386, § 4; Ga. L. 1982, p. 3, § 47; Ga. L. 1984, p. 996, § 2; Ga. L. 1994, p. 776, § 4.)

Cross references. — Creditable service discharge was other than honorable, not allowed for military service from which § 47-1-11.

JUDICIAL DECISIONS

Cited in *Vandiver v. Manning*, 215 Ga. 874, 114 S.E.2d 121 (1960); *Carter v. Haynes*, 228 Ga. 462, 186 S.E.2d 115 (1971).

OPINIONS OF THE ATTORNEY GENERAL

Narcotics agents employed by the Georgia Bureau of Investigation may purchase prior service credit under the Peace Officers and Annuity Benefit Fund, pursuant to Act No. 849, passed in the 1992 General Assembly session, which amended O.C.G.A. § 47-17-44 by rewriting subsection (c). 1992 Op. Att'y Gen. No. 92-18.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 313.

47-17-71. Grant of creditable service for active members previously denied membership in fund because of race or ethnicity.

(a) It is the intent of the General Assembly to provide for the grant of creditable service to any active member of the fund for each month of prior service as a peace officer rendered prior to January 1, 1976, if during such period the member was denied membership in the fund or was actively prevented from making such application because of his or her race or ethnicity.

(b) The board is authorized and directed to receive the applications of such members as would be eligible to receive creditable service under the terms and conditions as set forth in subsection (c) of this Code section. Entitlement to such creditable service shall attach upon the submission of application, subject to all provisions of this Code section relative to funding.

(c) A member wishing to establish creditable service for service performed prior to January 1, 1976, as provided in subsection (a) of this Code section, must make written application to the board during the six-month period from July 1, 2006 through December 31, 2006, and:

(1) Provide the board with such proof of prior service as the board deems necessary, which shall include, at a minimum, pay records, tax returns, W-2 statements, or a sworn statement of the employer stating that the employment records bear proof of such employment. Such statement shall be subject to a civil fine of \$5,000.00 for false swearing; and

(2) Provide the board with a sworn statement of the applicant that he or she applied for membership in the fund and was denied membership, or that he or she was actively prevented from making such application

because of his or her race or ethnicity. Such statement shall be subject to a civil fine of \$5,000.00 for false swearing.

(d) As soon as practicable following the last day for application, the board shall cause the actuary for the fund to determine the amount of funding necessary to grant the creditable service to all members whose applications are accepted and approved in accordance without creating any actuarial accrued liability as to the fund, in accordance with the provisions of Chapter 20 of this title, the "Public Retirement Systems Standards Law." A pro rata portion of one-half of such amount, determined by the number of months of creditable service requested by each person, shall be assigned as such person's employee contribution required to receive such creditable service. The board shall notify each applicant of his or her pro rata share, and each such person shall pay such amount to the board not later than March 1, 2007, or thereafter be ineligible to receive such creditable service. During the regular 2007 session, the General Assembly may appropriate funds sufficient to cover one-half of the amount determined by the actuary as necessary to grant the creditable service, together with any portion of the total required employee contribution which was not received by the board from the applicants by March 1, 2007.

(e) The creditable service provided for in subsection (a) of this Code section shall be granted on July 1, 2007, only if the board receives the full amount determined by the actuary necessary to implement the provisions of this Code section. Otherwise, the board shall refund all amounts received from the members as employee contributions, together with regular interest thereon, and this Code section shall thereafter have no effect. (Code 1981, § 47-17-71, enacted by Ga. L. 2006, p. 117, § 1/HB 101; Ga. L. 2007, p. 62, § 1/SB 104.)

OPINIONS OF THE ATTORNEY GENERAL

Construction with other law. — Provision of O.C.G.A. § 47-20-50(a), requiring that retirement bills be concurrently funded, and section 2 of 2006 Ga. Laws 117, requiring a

specific determination of concurrent funding regarding O.C.G.A. § 47-17-71, do not repeal O.C.G.A. § 47-17-71. 2006 Op. Att'y Gen. No. 2006-4.

ARTICLE 6

RETIREMENT BENEFITS AND DISABILITY BENEFITS

Administrative rules and regulations. — Administrative Rules, Official Compilation of the Rules and Regulations of the State of Georgia. Sheriffs' Retirement Fund of Georgia, Chapter 513-13-2.

Administrative Rules, Official Compilation of the Rules and Regulations of the State of Georgia, Peace Officers' Annuity and Benefit Fund of Georgia, Chapter 513-14-1.

47-17-80. Retirement benefit options; payment to surviving spouse; requirements; effect of reemployment; effect of changes in retirement benefits; payment on death of member.

(a) At the time a member qualifies for retirement payments, such member must choose a payment option provided for in this Code section. A member shall become eligible to begin receiving benefits on the first day of the month following the month in which the member qualified for retirement and terminated active employment as a peace officer. A member shall present to the secretary-treasurer a completed application form for retirement benefits. The application shall contain such information as the board shall require. After approval by the board, the secretary-treasurer shall pay to such retired member a monthly sum based on the option chosen by the member. If a married member with a spouse then living is unable to choose an option provided for in this Code section and to complete an application form because of death, mental incompetency, or other providential cause, then Option Two shall become effective.

(b) Option One shall consist of a single life annuity payable in monthly payments for the life of the member only. The monthly payment under this option shall be an amount equal to \$17.50 per month for each full year of creditable service and in the event the member shall have additional service credit not totaling a full year, the further sum of one-twelfth of the amount paid per month for each additional year of service credit shall be paid for each month of additional service credit, provided that the member either has at least ten years of membership service, or 15 years for members who become members on or after July 1, 2010, and is at least 55 years of age or has at least 30 years of creditable service, regardless of age. Such monthly benefit payment shall be paid on each full year and additional full months of creditable service up to a maximum of 30 years of total service. No member shall be eligible for benefits under this option until the member's official duties as a peace officer have been terminated, except as otherwise provided in this chapter, and unless the member files an application for retirement benefits within 90 days from the date of the termination of the member's official duties as a peace officer, unless prevented therefrom for good cause. If such member shall qualify for retirement benefits in every respect except for completion of payment of monthly dues for the periods of time for which the member has received service credit, dues shall be deducted from the member's monthly benefit check until such dues have been paid in full. Any member who has at least ten years of membership service, or 15 years for members who become members on or after July 1, 2010, for which dues have been fully paid but who has not reached 55 years of age may cease paying monthly dues into the fund if the member's employment as a peace officer is terminated; and upon reaching 55 years of age the member may be eligible to receive retirement benefits under this option.

(c) Option Two shall consist of a 100 percent joint life annuity payable during the life of the member or the member's spouse. The amount of monthly payment to be paid under this option shall be based on the date the member first becomes eligible to receive pension benefits (normal retirement date) and shall be computed so as to be actuarially equivalent to the monthly retirement payment which would have been paid to the member under Option One. Such actuarial equivalence shall be computed on the interest rate and mortality basis approved from time to time by the board, the age of the member, and, if applicable, the age of his or her spouse as of the date benefits are to commence or as of the date benefits would have commenced if the member had retired after first becoming eligible for full benefits, whichever is earlier.

(d) Option Three shall consist of a contingency life annuity with a 50 percent monthly payment to the surviving spouse. The amount of monthly payment to be paid under this option shall be based on the date the member first becomes eligible to receive pension benefits (normal retirement date) and shall be computed so as to be actuarially equivalent to the monthly retirement payment which would have been paid to the member under Option One. Such actuarial equivalence shall be computed on the interest rate and mortality basis approved from time to time by the board, the age of the member, and, if applicable, the age of his or her spouse as of the date benefits are to commence or as of the date benefits would have commenced if the member had retired after first becoming eligible for full benefits, whichever is earlier.

(e)(1) Under Option Two or Option Three, if the surviving spouse remarries, any benefits payable to the surviving spouse shall terminate as of the date of such remarriage.

(2) Under Option Two or Three, a retired member may revoke the election of any such option at any time after the entry of a final judgment of complete divorce from the retired member's spouse or the retired member may elect to continue under Option Two or Three for the benefit of the former spouse. Upon any such revocation, the retired member shall begin receiving the monthly retirement benefit which the retired member would have been entitled to receive under Option One. In the event any such retired member remarries after divorce from the former spouse and the retired member elected to revoke Option Two or Three as provided in this paragraph, the retired member may elect to begin receiving the applicable reduced monthly retirement benefit of equivalent actuarial value and reestablish on behalf of the new spouse the same option which was applicable to the former spouse. Such actuarial equivalence shall be based on the age of the retired member and the age of the retired member's new spouse at the time of such election and shall be computed on the Mortality Table GA51, with projection, using interest at 6 percent per annum, with a five-year age setback for females and

monthly payment annuity functions. The option on behalf of the new spouse may not be exercised until one year after the date of remarriage or until a child of the remarried couple is born, whichever is earlier.

(e.1) When a retired member has elected Option Two or Option Three, then in the event the spouse predeceases the retired member, the monthly retirement benefit payable to the retired member after the death of the spouse shall be increased to the monthly retirement benefit which the retired member would have been entitled to receive under Option One. In the event any such retired member remarries or has remarried after the death of the former spouse, the retired member may elect to begin receiving the applicable reduced retirement benefit of equivalent actuarial value and reestablish on behalf of the new spouse the same option which was applicable to the deceased former spouse, but such option on behalf of the new spouse may not be reestablished until one year after the date of remarriage or until a child of the remarried couple is born, whichever is earlier. Actuarial equivalence under this subsection shall be determined in the same manner that it is determined under paragraph (2) of subsection (e) of this Code section. This subsection applies to retired members who retired at any time prior to July 1, 1990, as well as to those who retire on or after that date, but increases in monthly retirement benefits authorized by this subsection shall not be paid retroactively for any period of time prior to July 1, 1990, notwithstanding the fact that a spouse covered under Option Two or Option Three may have died prior to July 1, 1990.

(f) Nothing contained in this Code section shall affect the requirement that a member make payments into the fund for a minimum period of ten years, or 15 years for members who become members on or after July 1, 2010, nor shall it affect the requirement that credit for service after March 1, 1951, shall not be given unless the member has made the required payments to the fund for all such service. Any peace officer becoming a member of the fund between April 1, 1953, and March 31, 1965, inclusive, must remain an active member and, in addition to completing the required years of service, must remit the correct amount of dues to the fund for a period of three years from the date he or she becomes a member, irrespective of previous service credited for which dues are paid, before being eligible for any retirement benefits provided under this Code section. Any peace officer becoming a member of the fund for the first time on or after April 1, 1965, must remain an active member and, in addition to completing the required years of service, must remit the correct amount of dues to the fund for a period of five years from the date he or she becomes a member, irrespective of previous service credited for which dues are paid, before being eligible for any retirement benefits provided under this Code section.

(g)(1) Except as provided in paragraphs (2) and (3) of this subsection, any member who again becomes employed as a peace officer after having

been placed on retirement under this Code section shall immediately notify the secretary-treasurer of such reemployment. Retirement benefits being paid to such member shall be terminated as of the date of such reemployment and shall remain terminated for the duration of such reemployment. During such period of reemployment, said member shall pay regular monthly dues into this fund. Upon meeting the requirements provided by law, such member shall be entitled to all benefits provided for in Code Sections 47-17-81 and 47-17-82; but such member shall not be entitled to any increase in retirement benefits by virtue of service during the period of reemployment unless such reemployment is for a term of three years or more, in which instance such member may again apply for retirement as if he or she had not previously been retired; and he or she shall be entitled to such benefits as may be provided by law at that time, if he or she so chooses.

(2) The provisions of paragraph (1) of this subsection shall not apply to a retired member employed in any capacity for 1,040 hours or less in any calendar year.

(3) The provisions of paragraph (1) of this subsection shall not apply to a member otherwise qualified for a normal service retirement under this chapter with at least 30 years of creditable service and who has attained the age of 55. Any such member may continue or reenter employment as a peace officer and shall for all purposes be considered a retired member of this fund; provided, however, that the provisions of this paragraph shall not apply to any person who first or again becomes a member on or after July 1, 2009.

(h) The amounts provided for as retirement benefits in this Code section shall apply to those members who have retired prior to July 1, 1990, as well as to those members who retire on or after that date. The service of each member who retired prior to July 1, 1990, shall be recomputed; and, if it is determined that the amounts provided for in this Code section result in an increase in the retirement benefits being paid to such member, such benefits shall be increased to the proper amount and shall be paid to the member in the future, beginning July 1, 1990. If it is determined that an increase in retirement benefits will result for any such retired member, and such retired member shall not have completed payment of dues for all service credit previously allowed as of the date of such member's retirement, monthly dues shall be deducted from the member's monthly retirement benefits until such time as said dues shall have been paid for each month of service for which retirement credit has been received; provided, however, that no such member shall be allowed to change the option under which the member originally retired unless the member shall again become employed as a peace officer as provided in subsection (g) of this Code section and complies with all the provisions of subsection (g) of this Code section.

(i) In the event an active member of the fund dies before retirement and such member has accumulated at least ten years of membership service, or 15 years for members who become members on or after July 1, 2010, or would otherwise have been eligible to receive retirement benefits except for the member's not having terminated the member's official capacity as a peace officer, benefits shall be extended to the surviving spouse of such member in the form of an annuity for the remaining life of such spouse determined and paid to such surviving spouse under Option Two of this Code section to the same extent as if such member had died while receiving retirement benefits under Option Two.

(j) Upon the death of any retired member, any unpaid monthly benefits shall be paid to the named beneficiary, if any, or if there is no named beneficiary, then to the estate of the retired member. (Ga. L. 1950, p. 50, § 11; Ga. L. 1952, p. 81, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 574, § 3; Ga. L. 1953, Nov.-Dec. Sess., p. 488, § 1; Ga. L. 1956, p. 280, § 10; Ga. L. 1958, p. 341, § 6; Ga. L. 1962, p. 39, § 5; Ga. L. 1965, p. 593, § 3; Ga. L. 1969, p. 74, § 3; Ga. L. 1971, p. 12, § 1; Ga. L. 1973, p. 57, § 1; Ga. L. 1973, p. 63, §§ 3, 4; Ga. L. 1974, p. 1204, § 1; Ga. L. 1975, p. 578, §§ 2, 3; Ga. L. 1979, p. 430, §§ 2, 3; Ga. L. 1981, p. 454, §§ 1-3; Ga. L. 1986, p. 609, § 1; Ga. L. 1988, p. 633, §§ 1-3; Ga. L. 1988, p. 999, § 1; Ga. L. 1990, p. 346, §§ 1, 2; Ga. L. 1990, p. 482, § 1; Ga. L. 1994, p. 320, § 4; Ga. L. 1995, p. 27, § 1; Ga. L. 1996, p. 304, § 1; Ga. L. 2000, p. 1241, § 1; Ga. L. 2002, p. 666, § 1; Ga. L. 2007, p. 163, § 1/HB 106; Ga. L. 2009, p. 322, § 7/HB 476; Ga. L. 2010, p. 909, § 2/HB 974.)

The 2009 amendment, effective July 1, 2009, added the proviso at the end of paragraph (g)(3).

The 2010 amendment, effective July 1, 2010, inserted “, or 15 years for members who become members on or after July 1,

2010,” in the second and last sentences of subsection (b) and in subsection (i); and inserted “or 15 years for members who become members on or after July 1, 2010,” in the first sentence of subsection (f).

JUDICIAL DECISIONS

Constitutionality. — Statute is neither in violation of Ga. Const. 1976, Art. VII, Sec. II, Para. I (see Ga. Const. 1983, Art. VII, Sec. III, Para. I), as seeking to impose an unauthorized tax, nor violative of Ga. Const. 1976,

Art. VII, Sec. V, Para. I (see Ga. Const. 1983, Art. IX, Sec. II, Para. VIII), as being an appropriation of money. *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950) (see O.C.G.A. § 47-17-80).

OPINIONS OF THE ATTORNEY GENERAL

Retroactive options. — Insofar as retroactive application of the options created by Ga. L. 1988, p. 633 i.e., subsections (d.1) and (e.2), is concerned, the options concerning

the death of a spouse are not retroactive, but the options concerning divorce are retroactive. 1989 Op. Att’y Gen. No. U89-1.

RESEARCH REFERENCES

C.J.S. — 3B C.J.S., Annuities, §§ 1 et seq., 8. 67 C.J.S., Officers and Public Employees, § 316 et seq. 80 C.J.S., Sheriffs and Constables, § 470 et seq.

ALR. — Disciplinary suspension of public employee as affecting computation of length

of service for retirement or pension purposes, 6 ALR2d 506.

Effect of divorce, remarriage, or annulment, or widow's pension or bonus rights or social security benefits, 85 ALR2d 242.

47-17-81. Eligibility for disability benefits; periodic medical examination; termination of disability benefits; application; hearings; powers of hearing officer; appeal.

(a) Any dues-paying member who became a member prior to July 1, 1993, who is rendered totally and permanently disabled by disease or injury so as to be unable to perform substantially all of the duties of the position to which the member was regularly assigned when the disability originated or so as to be unable to engage in any occupation or gainful employment for which the member is reasonably suited by virtue of the member's background, training, education, and experience shall be entitled to disability benefits of \$257.00 per month for life or until the member's disability ceases, provided that the member makes application to the board for disability benefits within 12 months of becoming totally and permanently disabled.

(b) The disability benefits provided under this Code section shall be payable upon the event of disability as provided in subsection (a) of this Code section regardless of the cause of the disability and shall be payable when the disability is a result of any mental or physical injury or disease, whether caused by reason of the peace officer's employment or not, provided that no benefits shall be payable under this Code section for any disability resulting from the chronic and excessive consumption of alcoholic beverages, addiction to drugs, the use of which is prohibited in this state by law, engagement by the member in any criminal act, willful misconduct of the member, or injury sustained by the member while serving in the armed forces of any country or while on active duty in the National Guard or other armed forces reserve force.

(c) Any other provision of law to the contrary notwithstanding, any member who is receiving disability benefits pursuant to this Code section on June 30, 1990, and who had at least 20 years of creditable service at the time such member first became eligible for such disability benefits shall receive the same benefits as a member who retires at age 55 or older with 20 years of creditable service under the provisions of Code Section 47-17-80. For each year of service above 20 years but not more than 30 years which such member had when first becoming eligible to receive disability benefits, the benefits shall be the same as those provided for the same number of years of creditable service under the provisions of Code Section 47-17-80. The

benefits of such members who are receiving disability benefits pursuant to this Code section on June 30, 1990, shall be recomputed and the increased benefits shall be paid to such members beginning July 1, 1990. Any member who first becomes eligible to receive disability benefits on or after July 1, 1990, who has the required years of creditable service as provided in this subsection shall have disability benefits computed and paid in the same manner as provided in this subsection.

(d) The amount of disability benefits in this Code section shall apply to those members who have retired on disability prior to July 1, 1990, as well as to those members who retire on disability on or after that date. The service of each such member who retired prior to July 1, 1990, shall be recomputed, and the benefits provided under this Code section shall be paid to such member in the future beginning July 1, 1990.

(e) Once each year during the first five years following the commencement of disability benefits under this Code section, and once in every three-year period thereafter, the board may require a disability beneficiary who has not yet attained 65 years of age to undergo a medical examination, such examination to be made at his place of residence, or other place mutually agreed upon, by physicians designated by the board. The disability benefits recipient may himself request such an examination. The designated physicians shall report to the board, following each such examination, the current status and condition of the recipient's disability.

(f) A disabled member's disability benefits shall cease:

(1) Upon his return to gainful employment with the employer for which he worked at the time his disability originated;

(2) If he refuses to submit to any medical examination requested under this Code section, in which case the benefits shall remain discontinued until the member's withdrawal of such refusal and submission to the requested medical examination; and, if his refusal continues for one year, all his rights in and to disability benefits may be revoked by the board;

(3) If the board determines on the basis of any medical examination that the member has sufficiently recovered from his disability so as to again be able to perform substantially all of the duties of the position to which he was regularly assigned when the disability originated, or so as to be able to engage in an occupation or gainful employment for which he is reasonably suited by virtue of his background, training, education, and experience;

(4) If the member does in fact obtain gainful employment compensating him at a level equal to or greater than the current compensation for the position he occupied at the time his disability originated; or

(5) When he dies.

(g) The board shall prescribe and furnish a form and procedure for the application for disability benefits. Applications shall contain such information as the board shall require. Upon the receipt of an application, the board may pass upon and decide whether to grant or deny the application on the basis of the submitted information or may refer the application to its duly appointed hearing officer for a recommendation. Any applicant for disability benefits shall have the right to request the board to refer his application to the hearing officer for a recommendation. In the consideration of any application for disability benefits, the receipt of disability benefits or payments by the applicant under the federal Social Security Act shall be deemed sufficient for eligibility for disability benefits under this Code section.

(h) The board is authorized and empowered to appoint and compensate a hearing officer for the purpose of holding hearings, compiling evidence and information, and submitting evidence, information, and recommendations to the board in any disability benefits case.

(i) The hearing officer shall have the authority to do the following in connection with any hearing on a disability application: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for the hearing or any continued hearings, and fix the time for filing any briefs; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the hearing officer. When a subpoena issued by the hearing officer is disobeyed, any interested party may apply to the superior court of the county where the hearing is being held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. Any applicant for disability benefits shall have the right to be represented by counsel before the hearing officer.

(j) With respect to all hearings before the hearing officer:

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in the trial of civil nonjury cases in the superior courts shall be followed. Evidence not admissible under such rules of evidence may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law; and

(2) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. At the discretion of the hearing officer, the original shall be compared with the copy or excerpt.

(k) The hearing officer, within 30 days from the close of the evidence or, if necessary, a longer period of time approved by the board, shall certify the

entire record from the hearing to the board, together with his recommendation on the application. On review of the entire record from the hearing officer, the board shall have all the powers it would have in presiding at the reception of the evidence. In its discretion, the board may take additional testimony or remand the matter to the hearing officer for such purpose. The recommendation of the hearing officer to the board shall be made a part of the record before the board.

(l) As a part of its decision subsequent to any hearing, the board shall include findings of fact and conclusions of law, separately stated, and the effective date of the decision. The decision of the board shall be mailed to the applicant for disability benefits as soon after the rendition of the decision as is practicable.

(m) Any applicant for disability benefits who is adversely affected by any final decision of the board may seek judicial review of the final decision of the board in the Superior Court of Spalding County. Proceedings for review shall be instituted by filing a petition with the court within 30 days after the decision is rendered. A copy of the petition shall be served upon the board. The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is aggrieved by the decision of the board, and the grounds upon which the petitioner contends the decision should be reversed or remanded. The petition may be amended with leave of the court.

(n) Within 30 days after the service of the petition or within further time allowed by the court, the board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By agreement of the petitioner, the record may be shortened. The court may require or permit subsequent corrections or additions to the record.

(o) The filing of the petition shall in no manner stay the enforcement of the decision of the board.

(p) The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board or remand the case for further proceedings. The court may reverse the decision of the board if substantial rights of the petitioner have been prejudiced because the findings, inferences, conclusions, or decisions of the board are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the board;
- (3) Made upon unlawful procedure;
- (4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(5) Arbitrary or capricious.

(q) A petitioner who is aggrieved by an order of the court in a proceeding authorized under this Code section may appeal to the Supreme Court of Georgia or the Court of Appeals of Georgia in accordance with Title 5.

(r) Any other provision of this Code section to the contrary notwithstanding, no person who becomes a member or again becomes a member of this fund on or after July 1, 1993, shall be entitled to any benefit provided for in this Code section. (Ga. L. 1950, p. 50, § 12; Ga. L. 1951, p. 472, § 4; Ga. L. 1952, p. 81, § 2; Ga. L. 1956, p. 280, § 11; Ga. L. 1958, p. 341, § 7; Ga. L. 1959, p. 330, § 3; Ga. L. 1962, p. 39, § 6; Ga. L. 1963, p. 386, § 1; Ga. L. 1976, p. 580, § 1; Ga. L. 1977, p. 682, § 1; Ga. L. 1979, p. 430, §§ 4, 5; Ga. L. 1981, p. 454, §§ 4, 5; Ga. L. 1982, p. 3, § 47; Ga. L. 1982, p. 2367, §§ 1, 2; Ga. L. 1986, p. 30, § 1; Ga. L. 1986, p. 609, § 2; Ga. L. 1988, p. 999, § 2; Ga. L. 1990, p. 482, § 2; Ga. L. 1993, p. 1000, §§ 3, 4.)

JUDICIAL DECISIONS

Not all disabilities are covered. — General Assembly did not intend for all disabilities suffered by “peace officers” to be covered by the new eligibility requirements regardless of the date of their occurrence. *Priest v. Peace Officers’ Annuity & Benefit Fund*, 248 Ga. 603, 284 S.E.2d 257 (1981).

Subsection (d) of this statute refers only to those who have retired on disability. *Lamneck v. Peace Officers’ Annuity & Benefit Fund*, 147 Ga. App. 346, 248 S.E.2d 710 (1978) (see O.C.G.A. § 47-17-81).

Eligibility requirements not retroactively changed. — Subsection (d) of this statute provides that the amount of the disability

payments for those who retired on disability from the fund prior to the amendment shall be the same as those who retire on disability after the amendment, and the eligibility requirements entitling members to disability retirement were not changed retroactively. *Lamneck v. Peace Officers’ Annuity & Benefit Fund*, 147 Ga. App. 346, 248 S.E.2d 710 (1978) (see O.C.G.A. § 47-17-81).

Cited in *Pritchard v. Board of Comm’rs of Peace Officers Annuity & Benefit Fund*, 211 Ga. 57, 84 S.E.2d 26 (1954); *Berry v. Peace Officers’ Annuity & Benefit Fund*, 248 Ga. 810, 286 S.E.2d 28 (1982); *Cronan v. Rickett*, 183 Ga. App. 85, 357 S.E.2d 841 (1987).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 316 et seq.

ALR. — Causal connection between fireman’s or policeman’s performance of official duties and his disability, for purpose of recovering disability benefits, 27 ALR2d 974.

Right to unemployment compensation as affected by receipt of pension, 56 ALR3d 520.

Determination whether peace officer’s disability is service-connected for disability pension purposes, 12 ALR4th 1158.

47-17-82. Designation of beneficiary to receive survivors benefits; amount of survivors benefits; provisions for payment of survivors benefits.

(a) A peace officer, upon becoming a member of the fund and after having designated a beneficiary, shall be issued a certificate by the board

whereby the board shall agree to pay the sum of \$3,500.00, or such lesser amount as might be arrived at under this Code section, to such beneficiary upon the death of such member. If a member has received \$1,000.00 or more in retirement benefits at the time of his or her death, such beneficiary shall only be entitled to receive \$2,500.00 upon the death of such member. If a member has received less than \$1,000.00 in retirement benefits at the time of his or her death, such beneficiary shall only be entitled to receive an amount which, when added to the amount already received by the member, will total \$3,500.00; provided, however, that the amount to be paid to a member who dies with less than five years of service shall be \$1,000.00.

(b) The designated beneficiary of any dues-paying member who receives an injury by external accident or violence arising out of and in the course of the employment as a peace officer and not resulting from willful misconduct of such officer, which injury is the direct and proximate cause of death within 12 months of the date of the injury, shall, upon application to the board and lawful proof of such injury and death as the direct and proximate result thereof, be paid a sum of \$5,500.00, provided that, if such peace officer received any disability benefits under this chapter, the \$5,500.00 death benefit provided for under this Code section shall be reduced in the amount of such disability benefits received; provided, further, that in no event shall such death benefit be less than \$2,500.00, regardless of the amount of benefits such peace officer may have drawn prior to his death.

(c) Applications for such benefits shall contain such information as the board shall desire. (Ga. L. 1950, p. 50, § 13; Ga. L. 1956, p. 280, § 12; Ga. L. 1962, p. 39, § 7; Ga. L. 1963, p. 386, § 2; Ga. L. 1965, p. 593, § 4; Ga. L. 1969, p. 74, § 4; Ga. L. 1973, p. 63, § 5; Ga. L. 1982, p. 3, § 47; Ga. L. 1982, p. 2362, §§ 1, 2; Ga. L. 1988, p. 999, § 3; Ga. L. 1994, p. 320, § 5.)

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 319 et seq.

ALR. — Relationship between fireman's or policeman's performance of official duties and his death, for purpose of recovery of benefits by survivors, 27 ALR2d 1004.

Misconduct as affecting right to pension or retention of position in retirement system, 76 ALR2d 566.

47-17-83. Refunds of membership dues; eligibility for reinstatement; eligibility to rejoin as a new member; refunds of overpaid dues.

(a) Upon application of any person who is or has been a member, the board may provide for a refund to such person of 95 percent of all dues paid by him for periods of service which qualify as creditable service under this chapter.

(b) A member who takes a refund after April 1, 1965, while still employed as a peace officer shall not be eligible to be reinstated to membership and shall not be eligible to receive credit for service rendered before he again becomes a member. After a period of at least six months after taking a refund, he may apply for new membership, subject to other terms and conditions set forth in this chapter and any lawful rules and regulations adopted by the board relating to membership.

(c) Upon application of any person who received a refund of dues prior to April 1, 1965, or of any person who is not employed as a peace officer and who receives a refund of dues after April 1, 1965, the board may reinstate such person as a member. Such person may further be granted credit for all periods of service for which dues have previously been paid, provided that such person shall, at the time of application, be a peace officer; provided, further, that he tenders back to the fund all moneys and all dues previously refunded, plus regular dues for any other period of service during which such person may have served as a peace officer, together with interest on such amounts at the rate of 8 percent per annum from the date of such refund; provided, further, that, if such person has served eight or more continuous months as a peace officer, beginning on or after April 1, 1965, without having made application for reinstatement to membership within that eight-month period, his right to be so reinstated to membership shall be forever forfeited and he shall not be eligible to receive credit for service rendered before he again becomes a member. He may apply for new membership, subject to other terms and conditions set forth in this chapter and any lawful rules and regulations adopted by the board relating to membership.

(d) The board may refund 100 percent of any overpayment of dues paid by any person for any period of service during which it is determined that such person was not a peace officer, and he is not entitled to credit for such period of service. (Ga. L. 1950, p. 50, § 5; Ga. L. 1951, p. 472, § 1; Ga. L. 1956, p. 280, § 5; Ga. L. 1958, p. 341, § 2; Ga. L. 1962, p. 39, § 2; Ga. L. 1965, p. 593, § 1; Ga. L. 1969, p. 74, § 1; Ga. L. 1973, p. 63, § 1.)

JUDICIAL DECISIONS

Cited in *Cole v. Foster*, 207 Ga. 416, 61 S.E.2d 814 (1950).

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“While still employed” construed. — Words “while still employed” in subsection (b) of this statute refer to a period of time during which services actually are rendered

or are expected to be rendered and not to a period of time following the completion of services. 1968 Op. Att’y Gen. No. 68-33 (see O.C.G.A. § 47-17-83).

ARTICLE 7

MISCELLANEOUS PROVISIONS

47-17-100. Effect of funding on provisions for benefits and annuities; coverage of claims before funds available; credit for service after February 1, 1950, but before this effective date.

The provisions of this chapter relating to benefits and annuities shall not become operative until after the funds necessary to carry out this chapter have been provided. All claims for annuities or benefits arising before such funds are made available shall not be covered by this chapter; and the board is directed not to pay any annuities or benefits based upon any such claim; but, for the purpose of computing the length of service under this chapter, the board shall be authorized to include the period of time elapsing between February 1, 1950, and the date that it becomes operative. (Ga. L. 1950, p. 50, § 17.)

47-17-101. Vesting of rights under this chapter.

All rights and benefits under this chapter shall be subject to future legislative change or revision, and no beneficiary shall be deemed to have any vested right to any annuities or benefits under this chapter. (Ga. L. 1950, p. 50, § 18.)

JUDICIAL DECISIONS

Validity of statute eliminating disability payments. — Former Code 1933, § 78-911 (see O.C.G.A. § 47-17-81), which eliminated, under certain conditions, payment for permanent or total disability, did not violate constitutional provisions providing that no ex post facto law, retroactive law, or law impairing the obligation of contracts shall be passed, because in passing former Code 1933, § 78-917 (see O.C.G.A.

§ 47-17-101) the legislature specifically provided that all rights and benefits conferred would be subject to future legislative change or revision, and that no beneficiary would be deemed to have any vested right to any annuities or benefits provided therein. *Prichard v. Board of Comm'rs of Peace Officers Annuity & Benefit Fund*, 211 Ga. 57, 84 S.E.2d 26 (1954).

RESEARCH REFERENCES

ALR. — Validity of legislation providing for additional retirement or disability allowances for public employees previously retired or disabled, 27 ALR2d 1442.

Validity and effect of retroactive change in rate of employee's contribution to public pension fund, 78 ALR2d 1197.

47-17-102. Reduction of benefits upon determination that available funds are insufficient; liability of members of the board for such reductions.

If at any time the amounts derived from the different sources provided in this chapter are not sufficient to enable the board to pay in full each person determined to be entitled to annuities or benefits under this chapter, then each beneficiary shall receive a prorated percentage of the monthly benefits otherwise payable until the fund is sufficiently replenished to warrant the resumption thereafter of full payments of such annuities or benefits to each beneficiary. In no event shall the board, or any member of the board, be liable to any beneficiary or the representatives of any beneficiary for any deficiencies in payments made under this Code section. (Ga. L. 1950, p. 50, § 14; Ga. L. 1982, p. 3, § 47.)

47-17-103. Exemption of rights and benefits under this chapter from taxation; exemption from garnishment, attachment, or other process; assignability.

The right to any pension, annuity, allowance, or benefit; to the return of contributions; to a pension, annuity, allowance or benefit itself; to any optional benefit, or any other right accrued or accruing to any person under this chapter; and to moneys under this chapter shall be exempt from any tax imposed by this state, county, municipal, or other political subdivision, except as provided in Code Section 48-7-27; exempt from levy and sale, garnishment, attachment, or any other process whatsoever; and shall be unassignable unless otherwise specifically provided for in this chapter. (Ga. L. 1962, p. 39, § 9; Ga. L. 1982, p. 3, § 47; Ga. L. 2000, p. 1449, § 10.)

RESEARCH REFERENCES

ALR. — Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711.

47-17-104. Attempts to defraud the fund by false information; failure to remit sums provided for in Code Section 47-17-60.

Any person who knowingly furnishes false information for the purpose of becoming a member of the fund, for receiving credit for service to which he is not entitled, or for receiving benefits hereunder or any person who knowingly assists in doing any of the foregoing things shall be guilty of a misdemeanor. Any person whose duty it is to remit the sum provided for in Code Section 47-17-60 and who fails or refuses to remit such sum shall be guilty of a misdemeanor. (Ga. L. 1956, p. 280, § 15; Ga. L. 1982, p. 3, § 47.)

CHAPTER 18

SOCIAL SECURITY COVERAGE FOR EMPLOYEES OF
THE STATE AND POLITICAL SUBDIVISIONS
OF THE STATE

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RESEARCH REFERENCES

ALR. — Judicial questions regarding federal Social Security Act and state legislation adopted in anticipation of or after the passage of that Act, to set up "state plan" contemplated by it, 118 ALR 1220; 121 ALR 1002.

Construction and application of state social security or unemployment compensation Act as affected by terms of the federal Act or judicial or administrative rulings thereunder, 139 ALR 892.

ARTICLE 1
GENERAL PROVISIONS

47-18-1. Legislative intent.

In order to extend to employees of the State of Georgia and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age, survivors, and disability insurance system embodied in the Social Security Act, it is declared to be the policy of the General Assembly, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. (Ga. L. 1953, Nov.-Dec. Sess., p. 294, § 1; Ga. L. 1956, p. 75, § 1.)

47-18-2. Definitions.

As used in this chapter, the term:

(1) “Employee” includes an officer of a political subdivision of the state. Any individual compensated for services as a school bus driver, either through a contractual relationship or otherwise, is deemed to be an employee of the governing board of education for which such services are performed.

(2) “Employee tax” means the tax imposed by Section 1400 of the federal Internal Revenue Code of 1939 and Section 3101 of the federal Internal Revenue Code.

(3) “Employment” means any service performed by an employee in the employ of the state or any political subdivision of the state, for such employer, except:

(A) Service which in the absence of an agreement entered into under this chapter would constitute “employment,” as defined in the Social Security Act; or

(B) Service which under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter. Service which under the Social Security Act may be included in an agreement only upon certification by the Governor in accordance with Section 218(d)(3) of the Social Security Act shall be included in the term “employment” if and when the Governor issues, with respect to such service, a certificate to the secretary of health and human services, pursuant to subsection (b) of Code Section 47-18-42.

(4) “Federal Insurance Contributions Act” means Subchapter A of Chapter 9 of the federal Internal Revenue Code of 1939 and Subchapters

A and B of Chapter 21 of the federal Internal Revenue Code, as such codes have been and may from time to time be amended.

(5) “Political subdivision” means counties and incorporated municipalities and includes an instrumentality of: (A) the state, (B) one or more political subdivisions of the state, or (C) the state and one or more of its political subdivisions. Such term also includes the Board of Regents of the University System of Georgia, the Federal-State Cooperative Inspection Service of the State of Georgia, the Board of Trustees of Georgia Military College, and the Georgia Municipal Association.

(6) “Secretary of health and human services” includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act, with respect to coverage under such act, of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator had delegated any such functions.

(7) “Social Security Act” means the act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the “Social Security Act,” as such act has been and may from time to time be amended. Such term shall also include regulations and requirements issued pursuant to that act.

(8) “State agency” means the State Personnel Administration.

(9) “Wages” means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of such remuneration which, even if it were for “employment” within the meaning of the Federal Insurance Contributions Act, would not constitute “wages” within the meaning of that act. (Ga. L. 1953, Nov-Dec. Sess., p. 294, § 2; Ga. L. 1956, p. 75, § 2; Ga. L. 1958, p. 198, § 1; Ga. L. 1959, p. 445, § 1; Ga. L. 1966, p. 150, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 2010, p. 1248, § 1/HB 997.)

The 2010 amendment, effective July 1, 2010, substituted “State Personnel Administration” for “Employees’ Retirement System of Georgia” at the end of paragraph (8).

Editor’s notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provides that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by

the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

JUDICIAL DECISIONS

Deputy sheriffs not on paid salaries are not “officers of a political subdivision” for whom social security payments are to be made by the county under the provisions of this statute. *Employees’ Retirement Sys. v.*

Lewis, 109 Ga. App. 476, 136 S.E.2d 518 (1964), overruled on other grounds, *Lucas v. Woodward*, 240 Ga. 770, 243 S.E.2d 28 (1978) (see O.C.G.A. § 47-18-2).

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Term “political subdivision” includes instrumentalities of a county or city, or of both. 1963-65 Op. Att’y Gen. p. 328.

Judge of small claims court treated as self-employed. — Judge of the Jones County small claims court is not a county officer of Jones County for purposes of the social security plan and agreement between the

Employees’ Retirement System and Jones County; rather, as a public official not covered under the agreement and compensated solely on the basis of fees, the judge of the Jones County small claims court would be treated as a self-employed person for purposes of social security coverage and taxation. 1980 Op. Att’y Gen. No. 80-37.

RESEARCH REFERENCES

ALR. — Construction and application of state social security or unemployment compensation Act as affected by terms of the federal Act or judicial or administrative rulings thereunder, 139 ALR 892.

Officer of corporation or member of firm, as an employee for purposes of Social Security Act, 139 ALR 925; 152 ALR 932.

ARTICLE 2

ADMINISTRATION BY THE STATE AGENCY GENERALLY

47-18-20. Duty to make and publish rules and regulations.

The state agency shall publish such policies and procedures, not inconsistent with this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter. (Ga. L. 1953, Nov.-Dec. Sess., p. 294, § 6; Ga. L. 2010, p. 1248, § 2/HB 997.)

The 2010 amendment, effective July 1, 2010, substituted “publish such policies and

procedures” for “make and publish such rules and regulations” near the beginning.

47-18-21. Expenses and administrative costs incurred under this chapter.

All expenses incurred by the state agency relative to and incidental to the administration of this chapter, including, without limitation, the creation of a full-time position for such purpose, shall be paid from funds appropriated to the state agency. (Ga. L. 1953, Nov.-Dec. Sess., p. 294, § 8; Code 1981, § 47-18-22; Code 1981, § 47-18-21, as redesignated by Ga. L. 2010, p. 1248, § 2/HB 997.)

The 2010 amendment, effective July 1, 2010, redesignated former Code Section 47-18-22 as present Code Section 47-18-21, and substituted the present provisions for the former provisions which read: "All expenses of the state agency relative to and incidental to the administration of this chapter shall be paid from funds paid into the state agency by participating subdivisions for such purpose and as shall be provided for by

the rules and regulations of such state agency."

Editor's notes. — This Code section formerly pertained to the duty to study and report on the problem of old-age, survivors, and disability insurance protection for employees of the state and its political subdivisions. The former Code section was based on Ga. L. 1953, Nov.-Dec. Sess., p. 294, § 7.

47-18-22. Redesignated.

Editor's notes. — Ga. L. 2010, p. 1248, § 2, effective July 1, 2010, redesignated

former Code Section 47-18-22 as present Code Section 47-18-21.

ARTICLE 3

PLANS, AGREEMENTS, AND REFERENDUMS REGARDING SOCIAL SECURITY COVERAGE

47-18-40. Agreement between state and federal government for state employees; like agreements between federal government and interstate instrumentalities; division of retirement system.

(a) The state agency, with the approval of the Governor, is authorized to enter on behalf of the state into an agreement with the secretary of health and human services, consistent with the terms of this chapter, for the purpose of extending the benefits of the federal old-age, survivors, and disability insurance system to employees of the political subdivisions of this state and with respect to services specified in such agreement which constitute employment within the meaning of this chapter. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and the secretary of health and human services shall agree upon. Except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide that:

(1) Benefits shall be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(2) At such times as may be prescribed under the Social Security Act, the state shall pay contributions to the secretary of the treasury with respect to wages equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act, if the services covered by the agreement constituted employment within the meaning of that Act;

(3) Such agreement shall be effective as of the date specified in the agreement, provided that it shall not be effective prior to the date permitted by the federal Social Security Act with respect to services in employment covered by the agreement;

(4) All services which (A) constitute employment, (B) are performed in the employ of the state or a political subdivision of the state, and (C) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under Code Section 47-18-41 shall be covered by the agreement; and

(5) As modified, the agreement shall include all services described in paragraph (4) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the secretary of health and human services, pursuant to subsection (b) of Code Section 47-18-42.

(b) Any instrumentality jointly created by this state and any other states is authorized, upon the granting of like authority by such other states:

(1) To enter into an agreement with the secretary of health and human services whereby the benefits of the federal old-age, survivors, and disability insurance system shall be extended to employees of such instrumentality;

(2) To require its employees to pay, and for that purpose to deduct from their wages, contributions equal to the amounts which they would be required to pay under subsection (a) of Code Section 47-18-41 if they were covered by an agreement made pursuant to subsection (a) of this Code section; and

(3) To make payments in accordance with federal law.

Such agreement, to the extent practicable, shall be consistent with the terms and provisions of subsection (a) of this Code section and other provisions of this chapter.

(c) Pursuant to Section 218(d)(6) of the Social Security Act and for purposes of this chapter, at the election of the Governor, any retirement system which covers employees of more than one political subdivision or employees of the state and one or more political subdivisions shall be deemed a separate retirement system with respect to each such political subdivision or as to the state and one or more political subdivisions with positions covered by such retirement system. Pursuant to Section 218(p) of the Social Security Act and also for the purposes of this chapter, any retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the Governor so elects, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(d) For the purposes of this chapter, any retirement system established by this state or any political subdivision thereof or established by an Act of the General Assembly which, on, before, or after March 21, 1958, is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under the agreement under this chapter and the other of which is composed of positions of members of such system who do not desire such coverage, shall, upon the Governor's authorization of a referendum for a retirement system pursuant to Section 218 of the Social Security Act, be deemed to be a separate retirement system with respect to each such division or part. At the election of the Governor, the referendum and the division of such system may occur simultaneously as authorized by Section 218(d)(7) of the Social Security Act. The positions of individuals who become members of such system after such coverage is extended shall be included in such division or part of such system composed of members desiring such coverage. The position of any individual which is covered by any such retirement system, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he or she first occupies such position, shall be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under this chapter. (Ga. L. 1953, Nov-Dec. Sess., p. 294, § 3; Ga. L. 1956, p. 75, § 3; Ga. L. 1957, p. 586, § 1; Code 1933, § 99-2103, enacted by Ga. L. 1958, p. 198, §§ 2, 3, 4; Ga. L. 1964, p. 303, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 92, § 1; Ga. L. 2009, p. 753, § 12/SB 109; Ga. L. 2010, p. 1207, § 64/SB 436; Ga. L. 2010, p. 1248, § 3/HB 997.)

The 2009 amendment, effective July 1, 2010, in subsection (e), substituted "Council of Superior Court Judges of Georgia" for "commissioner of administrative services" in the second and third sentences.

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, substituted "The Council" for "the Council" in the second sentence of subsection (e). The second 2010 amendment, effective July 1, 2010, substituted "Act" for "act" at the end of paragraph (a)(2); substituted "in accordance with federal law" for "to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements" at the end of paragraph (b)(3); inserted "or she" in the last sentence of subsection (d); and deleted former subsection (e) which read: "The position of any member of the division or part of the Superior Court Judges Retirement Fund of Georgia who does not desire coverage may be transferred to the separate retirement fund

composed of positions of members who do desire coverage upon such terms and conditions and at such time as permitted by federal law. In the event of such transfer, the employee contributions of such member required for social security coverage shall be deducted by the Council of Superior Court Judges of Georgia and remitted to the state agency, together with the required employer contributions. The Council of Superior Court Judges of Georgia is authorized and directed to pay, from funds appropriated or otherwise available for the operation of the superior courts, the required employer contributions on any such transferred member."

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any

way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.” Accordingly, the amendment to subsection (e) of this Code section by Ga. L. 2010, p. 1207, § 64, was not given effect.

OPINIONS OF THE ATTORNEY GENERAL

Only state employees covered by social security are those designated by Ga. L. 1953, Nov.-Dec. Sess., p. 294 (see O.C.G.A. Ch. 18, T. 47). 1971 Op. Att’y Gen. No. U71-141.

Withhold social security taxes for poll officer. — Election superintendents are required to withhold social security taxes from the compensation of a poll officer unless the

county employing the poll officer has made a request to the Employees’ Retirement System seeking the \$100.00 exclusion permitted by virtue of 42 U.S.C. § 418(c)(8), and the officer earns less than \$100.00 per year for the officer’s services. 1981 Op. Att’y Gen. No. 81-36.

RESEARCH REFERENCES

ALR. — Construction and application of state social security or unemployment compensation Act as affected by terms of the

federal Act or judicial or administrative rulings thereunder, 139 ALR 892.

47-18-41. Plans for old-age, survivors, and disability insurance coverage submitted by state political subdivisions; contents; approval; contributions required.

(a) Each political subdivision of the state is authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act to employees of such political subdivision. The adjutant general, acting on behalf of the state, is authorized to submit and enter into a similar plan with the state agency for extending such benefits to the civilian employees of the National Guard units of this state, who are, for the purposes of this chapter, deemed to be a separate coverage group as provided for in the federal Social Security Act; provided, however, that nothing contained in this chapter shall be construed to deem or designate the civilian employees of the National Guard units of this state to be employees of this state. Each such plan and any amendments thereof shall be approved by the state agency if it finds that such plan, as amended, is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless:

(1) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under Code Section 47-18-40;

(2) It provides that all services which constitute employment and are performed in the employ of a political subdivision by employees thereof shall be covered by the plan except that it may exclude services performed by individuals to whom Section 218(c)(3)(C) of the Social Security Act is applicable;

(3) It specifies the sources from which the funds necessary to make the payments required by paragraph (1) of subsection (c) of this Code section and by subsection (d) of this Code section are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(4) It provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) It provides that the political subdivision will make such reports in such form and containing such information as the state agency may from time to time require and will comply with such provisions as the state agency or the secretary of health and human services may from time to time find necessary in order to assure the correctness and verification of such reports; and

(6) It authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and which are consistent with the Social Security Act, provided that such conditions as may be provided by the regulations of the state agency for such termination shall assure that the state shall not incur any debt or loss in relation to any amounts due the state from other provisions of the Social Security Act, including grants in aid for public assistance and for maternal and child welfare.

(b) The state agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a) of this Code section and shall not terminate an approved plan without reasonable notice and opportunity for hearings to the political subdivision affected thereby.

(c) Each political subdivision as to which a plan has been approved under this Code section shall pay to the federal Social Security Administration contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under Code Section 47-18-40. (Ga. L. 1953, Nov.-Dec. Sess., p. 294, § 4; Ga. L. 1956, p. 75, § 4; Ga. L. 1956, p. 576, §§ 1, 2; Ga. L. 1963, p. 641, § 1; Ga. L. 1964, p. 304, § 1; Ga. L. 1967, p. 832, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 131, § 1; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2010, p. 1248, § 4/HB 997.)

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” throughout subsections (e) and (f). The second 2010 amendment, effective July 1, 2010, rewrote subsection (c) and deleted former subsections (d) through (h). See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — The amendment of this Code section by Ga. L. 2010, p. 863, § 3, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 1248, § 4. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

JUDICIAL DECISIONS

Wages must be paid before payment to fund required. — There is no obligation on the part of an employer to make payment into the contribution fund unless the employer pays wages in some form to the employee for unless some wages are paid

there is nothing from which to deduct. *Employees’ Retirement Sys. v. Lewis*, 109 Ga. App. 476, 136 S.E.2d 518 (1964), overruled on other grounds, *Lucas v. Woodward*, 240 Ga. 770, 243 S.E.2d 28 (1978).

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Withholding grant moneys to protect system. — Appropriated grant moneys allocated to a county may be withheld by the Department of Administrative Services and released to the Employees’ Retirement System to protect the system from delinquent social security reports and remittances for which the county is liable. 1975 Op. Att’y Gen. No. 75-65.

Withholding funds designated for road construction purposes is not the sole method under Ga. L. 1953, Nov.-Dec. Sess., p. 294 (see O.C.G.A. Ch. 18, T. 47) by which the Employees’ Retirement System may protect itself against political subdivisions which are delinquent in social security reports and remissions. 1975 Op. Att’y Gen. No. 75-65.

Withhold social security taxes for poll officer. — Election superintendents are required to withhold social security taxes from the compensation of a poll officer unless the

county employing the poll officer has made a request to the Employees’ Retirement System seeking the \$100.00 exclusion permitted by virtue of 42 U.S.C. § 418(c)(8), and the officer earns less than \$100.00 per year for the officer’s services. 1981 Op. Att’y Gen. No. 81-36.

Judge of small claims court treated as self-employed. — Judge of the Jones County small claims court is not a county officer of Jones County for purposes of the social security plan and agreement between the Employees’ Retirement System and Jones County; rather, as a public official not covered under the agreement and compensated solely on the basis of fees, the judge of the Jones County small claims court would be treated as a self-employed person for purposes of social security coverage and taxation. 1980 Op. Att’y Gen. No. 80-37.

RESEARCH REFERENCES

ALR. — Unemployment compensation: eligibility of employee laid off according to employer’s mandatory retirement plan, 50 ALR3d 880.

Right to unemployment compensation as affected by receipt of social security benefits, 56 ALR3d 552.

47-18-42. Referendum on the question of coverage of certain groups of employees.

(a) The Governor is empowered to authorize a referendum, and to designate any agency or individual to supervise its conduct, in accordance with the requirements of Section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision shall be excluded from or included under an agreement under this chapter. The notice of referendum required by Section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient to inform the employees of the rights which will accrue to them and their dependents and survivors and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(b) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in Section 218(d)(3) of the Social Security Act have been met, the Governor is authorized so to certify to the secretary of health and human services. (Ga. L. 1956, p. 75, § 5.)

OPINIONS OF THE ATTORNEY GENERAL

Certified professional personnel who are newly employed by the Department of Education and who opt for membership in the Teachers Retirement System (TRS) pursuant to Ga. Laws 1983, p. 1859 are not presently

extended Social Security coverage although such coverage could possibly be established under the referendum procedure set out in O.C.G.A. § 47-18-42. 1983 Op. Att'y Gen. No. 83-49.

47-18-43. Referendum on the question of coverage of positions covered by Chapter 12 of this title.

Anything in this chapter to the contrary notwithstanding, the Governor is empowered to authorize a referendum in accordance with the requirements of Section 218(d)(3) of the Social Security Act on the question of whether services in positions covered by the District Attorneys Retirement Fund of Georgia, Chapter 12 of this title, shall be excluded from or included under an agreement under this chapter with an effective date of July 1, 1956. If the referendum results in an affirmative vote, employee contributions required for social security coverage shall be deducted by the Prosecuting Attorneys' Council of the State of Georgia from the compensation or other funds due the employee. Such employee deductions shall be based on an affidavit from each individual as to the total wages received by him or her each calendar quarter as district attorney. Such affidavit shall be forwarded to the Prosecuting Attorneys' Council of the State of Georgia before the fifth day of the month following the end of each calendar quarter. If any district attorney fails to submit the required affidavit to the

Prosecuting Attorneys' Council of the State of Georgia within the required time, any and all funds due such individual shall be withheld by the Prosecuting Attorneys' Council of the State of Georgia until an appropriate affidavit has been received. The Prosecuting Attorneys' Council of the State of Georgia is authorized and directed to pay the required employer contribution from the funds appropriated or otherwise available. (Ga. L. 1958, p. 172, § 1; Ga. L. 1982, p. 3, § 47; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 92, § 1; Ga. L. 2009, p. 753, § 13/SB 109; Ga. L. 2010, p. 1248, § 5/HB 997.)

The 2009 amendment, effective July 1, 2010, substituted "Prosecuting Attorneys' Council of the State of Georgia" for "commissioner of administrative services" throughout this Code section, inserted "or her" in the third sentence, and substituted "or otherwise available" for "for the opera-

tion of the superior courts of the state" at the end of the last sentence.

The 2010 amendment, effective July 1, 2010, deleted "and shall be remitted to the state agency, together with the required employer contributions" following "employee" at the end of the second sentence.

47-18-44. Referendum on the question of coverage of positions covered by Chapter 8 of this title.

The Governor is empowered to authorize a referendum in accordance with the requirements of Section 218(d)(3) of the Social Security Act on the question of whether services in positions covered by the Superior Court Judges Retirement Fund of Georgia, Chapter 8 of this title, shall be excluded from or included under an agreement under this chapter with an effective date of July 1, 1956. If the referendum results in an affirmative vote, employee contributions required for social security coverage shall be deducted by The Council of Superior Court Judges of Georgia and remitted to the state agency, together with the required employer contributions. The Council of Superior Court Judges of Georgia is authorized and directed to pay the required employer contribution from the funds appropriated for the operation of the superior courts of the state. (Ga. L. 1958, p. 172, § 2; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 92, § 1; Ga. L. 2009, p. 753, § 14/SB 109; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2010, in the first sentence, deleted a comma following "Social Security Act" and substituted "Council of Superior Court Judges of Georgia" for "commissioner of administrative services" in the second and third sentences.

The 2010 amendment, effective July 1, 2010, substituted "The Council" for "the Council" in the second sentence.

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions

and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be sub-

ject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this

Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

ARTICLE 4

CONTRIBUTION FUND

47-18-60. Contribution fund into which contributions, interest, and penalties shall be deposited; control of fund; payment of amounts required under the Social Security Act.

Reserved. Repealed by Ga. L. 2010, p. 1248, § 6, effective July 1, 2010.

Editor’s notes. — This Code section was based on Ga. L. 1953, Nov.-Dec. Sess., p. 294, § 5; Ga. L. 1972, p. 148, § 1.

ARTICLE 5

EMPLOYEES’ SOCIAL SECURITY COVERAGE GROUP

47-18-70. Establishment of the Employees’ Social Security Coverage Group; control and administration of such coverage group.

(a) Pursuant to Article III, Section X of the Constitution of Georgia and Article VII, Section III, Paragraph I of the Constitution of Georgia, with due consideration to the limitations embodied therein, there is established a separate coverage group to be known as the Employees’ Social Security Coverage Group, membership of which shall consist of all state employees who are in the group to be covered for social security, the conditions of membership to be as established in Chapter 2 of this title governing the Employees’ Retirement System of Georgia.

(b) The Employees’ Social Security Coverage Group shall for the purposes of this Code section be under the jurisdiction and control of the State Personnel Board. Such board is authorized to establish such rules and regulations as are necessary to provide for payment of the contributions required under the Social Security Act and the proper administration of this Code section. Such board is further authorized to modify the present agreement with the secretary of health and human services for the purpose of extending the benefits of old-age, survivors, and disability insurance to members of such coverage group in a manner consistent with the terms of this chapter. Such coverage shall become effective not earlier than July 1, 1956. (Ga. L. 1956, p. 75, § 6; Ga. L. 1983, p. 3, § 63; Ga. L. 2010, p. 1248, § 7/HB 997.)

The 2010 amendment, effective July 1, 2010, substituted “State Personnel Board” for “Board of Trustees of the Employees’

Retirement System of Georgia” at the end of the first sentence of subsection (b).

JUDICIAL DECISIONS

Extra compensation or a gratuity. — Retirement benefit which is based on service prior to the date of retirement Act is not extra compensation after the service is ren-

dered nor is it a gratuity in violation of Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. III, Sec. VI, Para. VI). Cole v. Foster, 207 Ga. 419, 61 S.E.2d 814 (1950).

RESEARCH REFERENCES

ALR. — Officer of corporation or member of firm, as an employee for purposes of

Social Security Act, 139 ALR 925; 152 ALR 932.

ARTICLE 6

MISCELLANEOUS PROVISIONS

47-18-80. Other methods for obtaining old-age, survivors, and disability insurance coverage for employees of the state.

Social security coverage for employees of this state as provided for in this chapter shall be the sole and exclusive method for obtaining such coverage regardless of the source of funds used for payment of salaries or wages. (Ga. L. 1957, p. 586, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

County contributions must come from general funds. — County employer contributions to social security for teachers and other county employees must come from

general funds of the county, and no specific tax may be levied solely for that purpose. 1960-61 Op. Att’y Gen. p. 70.

CHAPTER 19

STATE EMPLOYEES' ASSURANCE DEPARTMENT

Sec.		Sec.	
47-19-1.	Creation of the State Employees' Assurance Department; management of the department; membership of the board of directors.	47-19-7.	Contracts with the Employees' Retirement System of Georgia for insurance coverage.
47-19-2.	Compensation of directors.	47-19-8.	Institution of actions on contracts; filing of written claim as condition precedent.
47-19-3.	Election of a chairman of the board of directors; employment of administrative and clerical assistants; actuarial and other services; payment of departmental expenses.	47-19-9.	Application of the State Personnel Administration to employees of the department; payment of pro rata share of costs.
47-19-4.	Power of the board of directors to establish rules and regulations.	47-19-10.	Directors defined; establishment of retired and vested inactive members trust fund; establishment of active members fund; management and investment of fund assets; contributions irrevocable.
47-19-5.	Scope of authority of the department; application of certain other insurance laws.		
47-19-6.	Duty to keep data for actuarial valuations.		

Administrative rules and regulations. — State of Georgia, State Employees Assurance Rules of General Applicability, Official Compilation of the Rules and Regulations of the Department, Chapter 513-15-1.

47-19-1. Creation of the State Employees' Assurance Department; management of the department; membership of the board of directors.

There is created a department of the state government to be known as the State Employees' Assurance Department. The department shall be managed by a board of directors consisting of the state treasurer, the Commissioner of Labor, the state auditor, the commissioner of personnel administration, and two members to be appointed by the Governor. (Ga. L. 1963, p. 521, § 1; Ga. L. 1986, p. 999, § 2; Ga. L. 1991, p. 274, § 3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" in the middle of the second sentence.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 23 et seq.

C.J.S. — 73 C.J.S., Public Administrative Bodies and Procedure, § 12 et seq.

47-19-2. Compensation of directors.

The directors shall serve without compensation but shall be reimbursed for all necessary expenses that they incur through service on the board of directors. (Ga. L. 1963, p. 521, § 2.)

47-19-3. Election of a chairman of the board of directors; employment of administrative and clerical assistants; actuarial and other services; payment of departmental expenses.

The board of directors shall elect a chairman from its membership and may employ necessary administrative and clerical assistants, who shall not be members of the board of directors. The board of directors shall engage such actuarial and other services as shall be required from time to time to transact the business of the department. The expenses of the department may be paid from funds received under any contract issued by the department or appropriated from time to time. (Ga. L. 1963, p. 521, § 3.)

47-19-4. Power of the board of directors to establish rules and regulations.

Subject to the limitations of this chapter, the board of directors may from time to time establish rules and regulations for the administration of any fund established under this chapter and for the transaction of its business. (Ga. L. 1963, p. 521, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 135 et seq.

C.J.S. — 73 C.J.S., Public Administrative Bodies and Procedure, § 161 et seq.

47-19-5. Scope of authority of the department; application of certain other insurance laws.

(a) The department shall have only the authority granted in this chapter, together with the authority to do those things necessary for the efficient and effective accomplishment of its duties.

(b) The department is not required to comply with Title 33. (Ga. L. 1963, p. 521, § 10.)

47-19-6. Duty to keep data for actuarial valuations.

The department shall keep in convenient form such data as shall be necessary for actuarial valuations of the funds maintained by the department and for checking the experience of its contracts. (Ga. L. 1963, p. 521, § 6.)

47-19-7. Contracts with the Employees' Retirement System of Georgia for insurance coverage.

The State Employees' Assurance Department may contract with the Employees' Retirement System of Georgia to provide group term life insurance for such persons as may be otherwise eligible for such coverage under Chapter 2 of this title. The benefit payments to be paid by reason of the death of an insured shall be made to his beneficiary or to his estate and not to the employer. (Ga. L. 1963, p. 521, § 8.)

47-19-8. Institution of actions on contracts; filing of written claim as condition precedent.

Any person who has a claim under any contract entered into by this department may bring an action on such contract in the superior court of the plaintiff's residence. However, as a condition precedent to the filing of the action, the claimant must file with the board of directors a claim in writing outlining his contentions and claim in detail; and no action may be filed on such claim until the claim has been decided adversely to the claimant or until the expiration of 60 days, whichever is earlier. (Ga. L. 1963, p. 521, § 9.)

Law reviews. — For note discussing problems with venue in Georgia, and proposing statutory revisions to improve the resolution

of venue questions, see 9 Ga. St. B.J. 254 (1972).

47-19-9. Application of the State Personnel Administration to employees of the department; payment of pro rata share of costs.

(a) The employees of the department shall be governed by such rules of position classification, appointment, promotion, demotion, dismissal, transfer, qualification, compensation, seniority, privileges, tenure, and other employment standards as may now or hereafter be established under Chapter 20 of Title 45.

(b) The department shall pay its pro rata share of the administrative costs of operating the State Personnel Administration, in the manner prescribed in paragraph (6) of subsection (b) of Code Section 45-20-4. (Ga. L. 1963, p. 521, §§ 4, 5; Ga. L. 1982, p. 3, § 47; Ga. L. 1983, p. 3, § 36; Ga. L. 2009, p. 752, § 1/SB 98.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Person-

nel Administration" in the middle of subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, § 1 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 38, 86.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 46, 63 et seq.

47-19-10. Directors defined; establishment of retired and vested inactive members trust fund; establishment of active members fund; management and investment of fund assets; contributions irrevocable.

(a) As used in this Code section, the term “directors” means the board of directors of the State Employees’ Assurance Department.

(b) There shall be established two separate trust funds under the control and management of the directors to be maintained for the provision of group term life insurance for eligible members of the Employees’ Retirement System of Georgia, the Georgia Legislative Retirement System, and the Georgia Judicial Retirement System as follows:

(1) One trust fund shall be known as the “retired and vested inactive members trust fund,” which shall be administered in the following manner:

(A) There shall be accumulated in the fund the payments made to the trust fund as premiums received from the Employees’ Retirement System of Georgia, the Georgia Legislative Retirement System, and the Georgia Judicial Retirement System as premiums for retired and vested inactive members of such retirement funds, as provided in subsection (c) of this Code section, including interest earned on deposits and investments of such payments; and

(B) All assets of the trust fund and all income, interest, and dividends derived from deposits and investments shall be used for the payments of benefits and expenses necessary for the maintaining of survivors benefit coverage. Such benefits and expenses shall in no manner become an obligation of the pension accumulation fund; and

(2) One trust fund shall be known as the “active members fund” which shall be administered in the following manner:

(A) There shall be accumulated in the trust fund the payments made to the trust fund as premiums received from the Employees’ Retirement System of Georgia, the Georgia Legislative Retirement System, and the Georgia Judicial Retirement System as premiums for active members of such retirement funds, as provided in subsection (c) of this Code section, including interest earned on deposits and investments of such payments; and

(B) All assets of the trust fund and all income, interest, and dividends derived from deposits and investments shall be used for the

payments of benefits and expenses necessary for the maintaining of survivors benefit coverage. Such benefits and expenses shall in no manner become an obligation of the pension accumulation fund.

(c) On or before June 1 of every year, the boards of trustees of each contracting retirement system shall collect contributions from employees and employers, in accordance with the laws governing the individual retirement systems, and shall transmit such funds to the directors. The directors shall deposit such funds in the trust funds established by this Code section in such respective amounts as directed by the actuary for the directors.

(d) The directors shall be authorized to contract with the Employees' Retirement System of Georgia for the management and investment of all fund assets and for the provision of actuarial services. Such assets may be commingled with other assets under the control of the Employees' Retirement System of Georgia, but shall be separately accounted for.

(e) Any other provision of law to the contrary notwithstanding, employee and employer contributions to the trust funds established by this Code section are irrevocable. The assets of such trust funds are dedicated to providing benefits to active, retired, and vested inactive members and their beneficiaries in accordance with the terms of the plan for group term life insurance. All trust fund assets are protected from creditors of any employer or of the Employees' Retirement System of Georgia, the Georgia Legislative Retirement System, the Georgia Judicial Retirement System, or the State Employees' Assurance Department.

(f) No moneys in either the retired and vested inactive members trust fund or the active members fund established by subsection (b) of this Code section shall transferred or be expended for any purpose other than the payment of benefits and expenses necessary for the maintaining of survivors benefit coverage prior to July 1, 2009, without express legislative enactment. (Code 1981, § 47-19-10, enacted by Ga. L. 2007, p. 176, § 3/HB 448; Ga. L. 2008, p. 1005, § 2/SB 328.)

The 2008 amendment, effective July 1, 2008, added subsection (f).

CHAPTER 20

PUBLIC RETIREMENT SYSTEMS STANDARDS

Article 1

General Provisions

- Sec.
47-20-1. Short title.
47-20-2. Legislative purpose.
47-20-3. Definitions.
47-20-4. Publicly funded retirement system subject to chapter; not applicable to defined contribution retirement system.

Article 2

Minimum Funding Standards

- 47-20-10. Minimum annual employer contribution.
47-20-10.1. Other post-employment benefits.
47-20-11. Minimum funding causing financial hardship in local retirement system [Repealed].
47-20-12. State controlled systems; certification of conformance to standards; freezing of benefits and other provisions when not in conformance [Repealed].
47-20-13. Financially sound systems exempt from minimum funding standards.

Article 3

Enforcement of Standards in Local Retirement Systems

- 47-20-20. Freezing of benefits and other provisions; amount of annual employer contribution.
47-20-21. Triennial actuarial investigations; penalties for violations shown; list of local systems not in conformance reported triennially.

Article 4

Retirement Bills in General Assembly

PART 1

GENERAL PROVISIONS

- 47-20-30. Definitions.

Sec.

- 47-20-31. Retirement bills must carry legislative counsel number when introduced; changes in bills prior to introduction.

PART 2

NONFISCAL RETIREMENT BILLS

- 47-20-32. Prerequisites to introduction of nonfiscal retirement bill.
47-20-33. Amendment of a nonfiscal retirement bill.

PART 3

FISCAL RETIREMENT BILLS

- 47-20-34. Introduction of bill and preliminary consideration by committee.
47-20-35. Perfection of bill by committee; actuarial investigation.
47-20-36. Scope of actuarial investigation; certificate and summary of investigation attached to bill.
47-20-37. Consideration of bill on the floor; approval of amendments by state auditor; effect of passing bill in violation of this article.

Article 5

Administration

- 47-20-50. Effective date of enacted retirement bill with fiscal impact; unfunded enacted bills; requirements for retirement bills having fiscal impact.
47-20-50.1. Report of funding of retirement bills having a fiscal impact; publication.
47-20-51. Accrued retirement benefits are not created, enhanced, or diminished by this chapter.

Article 6

Miscellaneous

- 47-20-60. State auditor authorized to provide personnel to carry out duties under chapter; funds au-

Sec.		Sec.	
	thorized; cooperation of state officials, agencies, and employees.	47-20-81.	Fund defined; applicability.
47-20-61.	Certificates and summaries of actuarial investigations attached to enrolled Act.	47-20-82.	Investing funds; eligibility; investment limitation.
47-20-62.	Effective date of chapter; consideration of fiscal retirement bills by 1984 regular session.	47-20-83.	Certificated or uncertificated forms of investment; real estate investments.
47-20-63.	Requirements for exempting bills regarding Georgia Firemen's Pension Fund from chapter provisions [Repealed].	47-20-83.1.	(Repealed effective July 1, 2015) Definitions; identification of scrutinized companies where public funds held; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; reporting.
47-20-64.	Exemption for 1991 bill amending Code Section 47-1-30 [Repealed].	47-20-84.	Large retirement systems.
		47-20-85.	Compliance.
		47-20-86.	Enforcement.

Article 7

Public Retirement Systems Investment
Authority Law

47-20-80. Short title.

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1169 et seq. C.J.S. — 81A C.J.S., States, § 213 et seq.

ARTICLE 1

GENERAL PROVISIONS

47-20-1. Short title.

This chapter shall be known and may be cited as the “Public Retirement Systems Standards Law.” (Code 1981, § 47-20-1, enacted by Ga. L. 1983, p. 1368, § 1.)

Cross references. — Funding standards, Ga. Const. 1983, Art. III, Sec. X, Para. V.

47-20-2. Legislative purpose.

It is the purpose of this chapter to comply with the provisions of Article III, Section X, Paragraph V of the Constitution of Georgia requiring the General Assembly to enact legislation to define funding standards to assure the actuarial soundness of any retirement or pension system supported wholly or partially from public funds and to control legislative procedures so that no bill or resolution creating or amending any such retirement or pension system shall be passed by the General Assembly without concurrent

provisions for funding in accordance with the defined funding standards. (Code 1981, § 47-20-2, enacted by Ga. L. 1983, p. 1368, § 1.)

47-20-3. Definitions.

As used in this chapter, the term:

(1) “Accumulated retirement system benefits” means benefits that are attributable under the provisions of a retirement system to employees’ service rendered to a specific valuation date.

(2) “Actuarial accrued liability” means that portion, as determined by a particular actuarial cost method, of the actuarial present value of retirement system benefits and expenses which is not provided for by future normal costs.

(3) “Actuarial assumptions” means assumptions as to the occurrence of future events affecting retirement system costs such as: mortality, withdrawal, disability, and retirement; changes in compensation and national pension benefits; rates of investment earnings and asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other relevant items.

(4) “Actuarial cost method” means a procedure for determining the actuarial present value of retirement system benefits and expenses and for developing an actuarially equivalent allocation of such value to time periods, usually in the form of a normal cost and an actuarial accrued liability. Acceptable actuarial cost methods are the aggregate, attained age, entry age, frozen attained age, frozen entry age, and unit credit methods.

(5) “Actuarial present value” means the value of an amount or series of amounts payable or receivable at various times from a retirement system, determined as of a given date by the application of a particular set of actuarial assumptions.

(6) “Actuarial present value of accumulated retirement system benefits” means the amount as of a valuation date that results from applying actuarial assumptions to the accumulated retirement system benefits, with the actuarial assumptions being used to adjust those benefits to reflect the time value of money, through discounts for interest, and the probability of payment, by means of decrements such as for death, disability, withdrawal, or retirement, between the valuation date and the expected date of payments.

(7) “Actuarial valuation” means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values for a retirement system.

(8) "Actuarial value of assets" means the value of cash, investments, and other property belonging to a retirement system, as used by the actuary for the purpose of an actuarial valuation.

(9) "Actuary" means an actuary who is enrolled under Subtitle C of Title III of the federal Employee Retirement Income Security Act of 1974, P.L. 93-406, or an associate of the Society of Actuaries.

(10) "Annual required contribution" means the annual required contribution determined in accordance with the requirements of Governmental Accounting Standards Board Statements No. 25 and No. 27 or any subsequent applicable Governmental Accounting Standards Board statements.

(11) "Beneficiary" means a person receiving or entitled to receive a benefit pursuant to a retirement system.

(12) "Benefit" means any benefit, including disability benefits, which is paid or payable to a beneficiary under a retirement system.

(13) "Benefit increase" means a change in or amendment to a retirement system which results or will result in an increase in the benefits being paid or which will be paid to a beneficiary or potential beneficiary under a retirement system and includes any change in a retirement system which decreases the requirements for becoming eligible to receive a benefit and any change which grants or authorizes a member or members of a retirement system to obtain additional creditable service under the retirement system for service rendered in a capacity other than as a member of the retirement system.

(14) "Employee" means officials and employees of the state or of any department, board, bureau, commission, authority, or other agency thereof and the officials and employees of a political subdivision or any agency thereof who are or who become members of a retirement system.

(15) "Employee contribution" means that part of the compensation of an employee which is paid by or on behalf of an employee as a contribution to a retirement system.

(16) "Employer" means the State of Georgia for any retirement system financially supported in whole or in part by appropriations made by the General Assembly, by the proceeds of a tax levied by law enacted by the General Assembly, or by fines and forfeitures or portions of fines and designated by law as a source of funding for a retirement system; and, for any retirement system supported in whole or in part by the funds of a political subdivision, "employer" means the local governing authority authorizing or providing for the local retirement system.

(17) "Employer contribution" means:

(A) Funds paid by an employer to support financially a retirement system;

(B) Public funds, whether by taxes, fines and forfeitures, or other sources, devoted to the financial support of a retirement system; and

(C) Any other funds, other than employee contributions, used to support financially a retirement system.

(18) “Legislatively controlled retirement system” means a retirement system in existence on January 1, 1984, which was created by an Act of the General Assembly and which may be amended only by an Act of the General Assembly.

(19) “Local governing authority” means the council, board of aldermen, board of commissioners, commissioner, local board of education, or other person or body of persons entrusted by law with the administration, management, and control of the fiscal affairs of a political subdivision.

(19.1) “Negative unfunded actuarial accrued liability” means for any actuarial valuation the excess of actuarial value of assets over the actuarial accrued liability of a retirement system under an actuarial cost method utilized by the retirement system for funding purposes.

(20) “Normal cost” means that portion of the actuarial present value of a retirement system benefits and expenses which is allocated to a valuation year by the actuarial cost method used for the retirement system.

(20.1) “Normal cost contribution” means the contribution for the portion of the actuarial present value of a retirement system’s benefits and expenses which is allocated to a valuation year by the actuarial cost method used for the retirement system.

(21) “Political subdivision” means any county, municipality, or local school district of this state or any authority created for or on behalf of any such political subdivision or created for or on behalf of any combination of such political subdivisions.

(22) “Retirement bill” means any bill or resolution introduced into the General Assembly which creates or affects a retirement system.

(23) “Retirement system” means any retirement or pension plan or any other plan or program which exists on January 1, 1984, or which is created or established on or after that date, and which is maintained by an employer or maintained pursuant to law or other authority of an employer for the purpose of paying benefits to employees or their beneficiaries after employees cease active employment by retirement, disability, death, or other termination. The term “retirement system” shall include any plan or program which creates a retired position, commonly referred to as “emeritus,” and provides a salary for the retired position in lieu of a retirement benefit. The term “retirement system” shall not include an individual retirement account or other plan which

provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account and any income, expenses, gains, and losses and any forfeitures of accounts of other participants which may be allocated to a participant's account.

(24) "Retirement system administrator" means the board of trustees or other body or individual having responsibility, either by law or by other authority of an employer, for the management and administration of a retirement system.

(24.1) "Unfunded accrued liability contribution" means the difference between the total employer and employee contribution and the normal cost contribution.

(25) "Unfunded actuarial accrued liability" means for any actuarial valuation the excess of the actuarial accrued liability over the actuarial value of the assets of a retirement system under an actuarial cost method utilized by the retirement system for funding purposes. (Code 1981, § 47-20-3, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1985, p. 209, § 1; Ga. L. 1987, p. 240, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2000, p. 1208, § 1; Ga. L. 2001, p. 21, § 1; Ga. L. 2005, p. 535, §§ 22-26/HB 460.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in the second sentence of paragraph (23) a comma was inserted following "emeritus."

U.S. Code. — Subtitle C of Title III of the federal Employee Retirement Income Security Act of 1974, referred to in paragraph (9), is codified at 29 U.S.C. §§ 1241, 1242.

OPINIONS OF THE ATTORNEY GENERAL

Metropolitan Atlanta Rapid Transit Authority (MARTA) pension plan, which is largely funded by public funds and is operated for employees of MARTA, an instru-

mentality of a combination of various local governments, is a public retirement system intended to be covered under O.C.G.A. Ch. 20, T. 47. 1987 Op. Att'y Gen. No. 87-13.

47-20-4. Publicly funded retirement system subject to chapter; not applicable to defined contribution retirement system.

Any other provision of law to the contrary notwithstanding, any public retirement system or pension fund supported wholly or partially by public funds shall be subject to the provisions of this chapter. This Code section applies, without limitation, to the Georgia Municipal Employees Benefit System created by Chapter 5 of this title and to any association of like political subdivisions which contracts with its members for the pooling of assets. This Code section shall not apply to any defined contribution retirement system. (Code 1981, § 47-20-4, enacted by Ga. L. 2000, p. 2, § 1.)

Cross references. — Public Retirement Systems Investment Authority Law, Art. 7, Ch. 20, T. 20.

ARTICLE 2

MINIMUM FUNDING STANDARDS

47-20-10. Minimum annual employer contribution.

(a) In order to assure the actuarial soundness of each retirement system, the minimum annual employer contribution for each retirement system, unless excepted by Code Section 47-20-13, shall be the sum of the amounts determined under paragraphs (1), (2), and (3) of this subsection minus the amount determined under paragraph (4) of this subsection; provided, however, that under no circumstances shall the minimum annual employer contribution be less than zero or result in a contribution credit for a subsequent year, as follows:

(1) The normal cost of the retirement system for the year; plus

(2) The amounts necessary to amortize:

(A) The unfunded actuarial accrued liability over a period of 40 years in the case of a retirement system in existence on January 1, 1983, based on the first actuarial valuation of the retirement system which is made on or after January 1, 1984; or

(B) The unfunded actuarial accrued liability over a period of 30 years in the case of a retirement system which is created or established after January 1, 1983, based on the first actuarial valuation of the retirement system; plus

(C) The increase, if any, in unfunded actuarial accrued liability over a period of 20 years for any such increase which occurs after January 1, 1984, during any year as a result of changes made in the provisions of the retirement system affecting active employees; plus

(D) The increase, if any, in unfunded actuarial accrued liability over a period of 15 years for any such increase which occurs from experience under the actuarial assumptions applicable to the retirement system; plus

(E) The increase, if any, in unfunded actuarial accrued liability over a period of 30 years for any such increase resulting from changes in actuarial assumptions applicable to the retirement system; plus

(3) If not otherwise included in the calculations under paragraph (1) or (2) or paragraphs (1) and (2) of this subsection:

(A) The amount necessary to amortize over a period of ten years in equal annual installments the increase, if any, in unfunded actuarial

accrued liability resulting from benefit increases granted during the year to beneficiaries under the retirement system; or

(B) The amount necessary to pay the amount of increase in benefits granted during the year to beneficiaries under the retirement system on a current disbursement or pay-as-you-go basis; minus

(4) The amount:

(A) Necessary to amortize the decrease, if any, in unfunded actuarial accrued liability over a period of 20 years for any such decrease which occurs after January 1, 1984, during any year as a result of changes made in the provisions of the retirement system; plus

(B) Necessary to amortize the decrease in unfunded actuarial accrued liability, if any, over a period of 15 years for any such decrease which occurs from experience under the actuarial assumptions applicable to the retirement system; plus

(C) Necessary to amortize the decrease in unfunded actuarial accrued liability, if any, over a period of 30 years for any such decrease resulting from changes in the actuarial assumptions applicable to the retirement system; plus

(D) In excess of the minimum annual employer contribution required by this Code section which accumulates after January 1, 1984; plus

(E) Employee contributions for the year.

(b) In the case of a retirement system which uses a formula related to the compensation of the members of the retirement system as a basis for the calculation of benefits under the retirement system, the amortization amounts required by subsection (a) of this Code section, except for the amount determined under paragraph (3) of subsection (a) of this Code section, may be determined as a level percentage of future compensation. If such level percentage amortization is used, the actuarial assumption for future annual payroll growth shall not exceed the actuarial assumed valuation interest rate of the retirement system less 2 1/2 percent. The minimum standards provided by subsection (a) of this Code section are deemed to have been met if such level percentage amortization is used and the employer contribution is equal to or greater than the annual required contribution as is determined in accordance with the provisions of Governmental Accounting Standards Board Statements No. 25 and No. 27.

(c) In the case of a retirement system which does not use a formula related to the compensation of the members of such retirement system as a basis for the calculation of benefits under such retirement system, the minimum funding standards provided for in subsection (a) of this Code section shall be deemed to have been met if the employer contribution is

equal to or greater than the annual contribution as determined in accordance with the provisions of Governmental Accounting Standards Board Statements No. 25 and No. 27.

(d)(1) The minimum funding standards provided for in subsection (a) of this Code section shall be deemed to have been met if as of the latest actuarial valuation a retirement system has a negative unfunded actuarial accrued liability and the employer contribution is equal to or greater than the annual required contribution as determined in accordance with the provisions of Governmental Accounting Standards Board Statements No. 25 and No. 27; provided, however, that in no case shall the negative unfunded actuarial accrued liability be amortized over a period of less than ten years. If a retirement system has such a negative unfunded actuarial accrued liability, the amounts necessary to amortize under paragraphs (2), (3), and (4) of subsection (a) of this Code section established prior to the current actuarial valuation date will be considered to be fully amortized under the minimum funding standards provided by subsection (a) of this Code section.

(2) In any actuarial valuation subsequent to the valuation in which a retirement system is found to have complied with the provisions of paragraph (1) of this subsection, if the retirement system still has a negative unfunded actuarial accrued liability, the only amortization required under such minimum funding standards will be an amortization of the negative unfunded actuarial accrued liability over a period of not less than ten years of the actuarial accrued liability. For any such subsequent actuarial valuations, whenever the retirement system again has an unfunded actuarial accrued liability, the minimum standards provided by subsection (a) of this Code section shall apply with new amounts necessary to amortize the newly created unfunded actuarial accrued liability.

(e) In determining the minimum annual employer contribution under subsection (a) of this Code section:

(1) All benefits which it is reasonable to anticipate will be paid from the retirement system because of the current active members and payments to beneficiaries shall be taken into account; and

(2) All costs, liabilities, and other factors under the retirement system shall be determined by an actuary on the basis of an actuarial cost method and actuarial assumptions which, in the aggregate, are reasonable, considering the experience of the retirement system and reasonable expectations, and which, in combination, offer the actuary's best estimate of anticipated experience under the retirement system.

(f) Upon completion of the first actuarial investigation of a retirement system after January 1, 1984, and for each subsequent actuarial investigation, the minimum annual employer contribution required by this Code

section shall be increased by an amount equivalent to the interest earned on such minimum annual employer contribution, based on the actuarial assumed valuation interest rate applicable to the retirement system, from the date of such actuarial investigation until the date the minimum annual employer contribution is made to the retirement system. This subsection shall not apply to a retirement system to which annual employer contributions are being made in excess of the minimum annual employer contribution required by this Code section.

(g) In no event will employee contributions of active members of a retirement system be used to pay benefits to beneficiaries under the retirement system.

(h) The minimum funding requirements of this Code section shall not apply to prefunding, in whole or in part, of anticipated future costs of providing other post-employment benefits as defined by Governmental Accounting Standards Board Statements Number 43 and Number 45 for retired employees of a political subdivision including those presently retired and those anticipated to retire in the future, as provided in Code Section 47-20-10.1. Such prefunding may be maintained as part of the same investment pool as the fund receiving employer and employee contributions to pay the cost of providing retirement benefits under any retirement system maintained by the political subdivision for its employees so long as such funds are separately accounted for and separate records are maintained with respect to each fund. Funds maintained by a political subdivision for the purpose of prefunding other post-employment benefits for retired employees may be invested and reinvested in accordance with the provisions of Code Section 47-1-12, or Article 7 of Chapter 20 of this title, as applicable, and, for the purposes of that Code section or article and the home rule provisions of the laws and the Constitution of the State of Georgia only, such funds shall be treated in the same manner as retirement funds. (Code 1981, § 47-20-10, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1985, p. 209, § 1; Ga. L. 1991, p. 685, § 1; Ga. L. 1993, p. 86, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2000, p. 1208, § 2; Ga. L. 2001, p. 21, § 1; Ga. L. 2005, p. 535, § 27/HB 460; Ga. L. 2007, p. 68, § 1/SB 156.)

47-20-10.1. Other post-employment benefits.

(a) Political subdivisions are authorized to establish plans to provide for payment of other post-employment benefits, as defined by Governmental Accounting Standards Board Statements Number 43 and Number 45 for their eligible present and future retirees and other related expenses as described herein. Such benefits may be prefunded by irrevocable trusts or other authorized funding mechanisms subject to the financial reporting, disclosure, and actuarial requirements of Governmental Accounting Standards Board Statements Number 43 and Number 45 or any subsequent Governmental Accounting Standards Board updates or statements that may

be applicable. Except as otherwise provided under subsection (c) of this Code section, the plan and assets of any trust or fund so established may be under the governance and investment authority of a retirement system maintained by the political subdivision or other board of trustees established for such purpose; provided, however, that the assets of any other post-retirement benefit plan, trust, or fund shall be separately accounted for and separate records shall be maintained. The prefunded amounts shall be available without fiscal year limitations for other post-employment benefits, as defined by Governmental Accounting Standards Board Statements Number 43 and Number 45, and administration costs. All employer contributions, plan participant contributions, appropriations, earnings, and reserves for the payment of obligations under the plan shall be credited to such trust or fund. The amounts remaining in such trust or fund, if any, after other post-employment benefit expenses and administration costs have been paid in any year shall be retained in such trust or fund for future payments until the satisfaction of all plan liabilities under the trust or fund for other post-employment benefits. All prefunded amounts shall be used solely for the payment of plan benefits and administrative costs and for no other purpose.

(b) Prefunded assets of whatever kind or nature of any other post-employment benefit plan or trust, and the earnings or proceeds derived from such investments or assets, are limited to paying other post-employment benefits and administrative costs and are declared to be public property and exempt from taxation by this state, or by any political subdivision of this state, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever.

(c) Employers who are eligible to participate in the Georgia Municipal Employees Benefit System created by Chapter 5 of this title may establish or participate in another post-employment benefit plan, trust, or fund under the governance and investment authority of the board of trustees of the Georgia Municipal Employees Benefit System, notwithstanding any provision of this Code section or Code Section 47-20-10 to the contrary. The assets of any such plan, trust, or fund under the governance and investment authority of the board of trustees of the Georgia Municipal Employees Benefit System may be maintained as part of the same investment pool as the system retirement fund and invested pursuant to the applicable provisions of Article 7 of Chapter 20 of Title 47, notwithstanding any provision of subsection (c) of Code Section 47-5-28 to the contrary, so long as the assets of the plan, trust, or fund and the Georgia Municipal Employees Benefit System retirement fund are separately accounted for and separate records are maintained for the plan, trust, or fund and the Georgia Municipal Employees Benefit System retirement fund. (Code 1981, § 47-20-10.1, enacted by Ga. L. 2007, p. 68, § 2/SB 156.)

47-20-11. Minimum funding causing financial hardship in local retirement system.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 56, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 47-20-11, enacted by Ga. L. 1983, p. 1368, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-20-12. State controlled systems; certification of conformance to standards; freezing of benefits and other provisions when not in conformance.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 57, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 47-20-12, enacted by Ga. L. 1983, p. 1368, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit,

option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-20-13. Financially sound systems exempt from minimum funding standards.

The minimum funding standards specified by Code Section 47-20-10 shall not apply to a retirement system which holds actuarial assets in excess of 150 percent of the actuarial present value of the accumulated retirement system benefits. (Code 1981, § 47-20-13, enacted by Ga. L. 1983, p. 1368, § 1.)

ARTICLE 3

ENFORCEMENT OF STANDARDS IN LOCAL RETIREMENT SYSTEMS

47-20-20. Freezing of benefits and other provisions; amount of annual employer contribution.

(a) In the case of a retirement system of a political subdivision, unless excepted by Code Section 47-20-13, neither the local governing authority by

ordinance or resolution or other action nor the retirement system administrator shall take any action on or after January 1, 1984, to grant a benefit increase under any retirement system of the political subdivision until annual employer contributions to each retirement system of the political subdivision are in conformity with the minimum funding standards specified by Code Section 47-20-10. The local governing authority of a political subdivision shall not take any action after January 1, 1984, to create or establish any new retirement system until all existing retirement systems of that political subdivision are being funded in conformity with the minimum funding standards specified by Code Section 47-20-10. This limitation shall not prohibit a local governing authority from creating or establishing a new retirement system as a successor to the existing retirement system or systems of the political subdivision if the resulting new system and the remaining obligations under the previously existing system or systems are funded in accordance with the minimum funding standards specified by Code Section 47-20-10. The membership of such a successor retirement system need not be confined to the membership of the previously existing retirement system or systems.

(b) Unless excepted by Code Section 47-20-13, after January 1, 1984, the annual employer contribution to each retirement system of a political subdivision shall be in an amount equal to or greater than the minimum annual employer contribution required by Code Section 47-20-10. (Code 1981, § 47-20-20, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 2010, p. 1207, § 58/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted “and subject to the provisions of Code Section 47-20-11” following “Section 47-20-13” near the beginning of subsection (b).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any

way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-20-21. Triennial actuarial investigations; penalties for violations shown; list of local systems not in conformance reported triennially.

(a) The retirement system administrator of each retirement system of a political subdivision shall comply fully with the requirements of Code Section 47-1-3 requiring the employment of an actuary and the completion of actuarial investigations once every three years. In addition to the other requirements specified by Code Section 47-1-3 for such actuarial investigations, each such investigation shall express the actuary’s opinion, which

shall be supported by such analysis as the actuary determines necessary, of the status of the retirement system with regard to the minimum funding standards specified in Code Section 47-20-10. Each such actuarial investigation shall also include an analysis of each change in or amendment to the retirement system since the previous investigation and shall identify any change or amendment which granted a benefit increase.

(b) If an actuarial investigation or a financial report which is submitted to the state auditor under Code Section 47-1-3 shows that an amendment or change was made in a retirement system of a political subdivision granting a benefit increase in violation of subsection (a) of Code Section 47-20-20 or shows that a retirement system of a political subdivision is not in conformity with the requirements of subsection (b) of Code Section 47-20-20, it shall be the duty of the state auditor to notify the state treasurer; and it shall be the duty of the state treasurer to withhold any state funds payable to the applicable political subdivision until the actuary of the applicable retirement system certifies to the state auditor and to the state treasurer that employer contributions to each retirement system of the political subdivision are in conformity with the minimum funding standards specified in Code Section 47-20-10.

(c) The report on the condition of local retirement systems submitted to the Governor and to members of the General Assembly pursuant to Code Section 47-1-4 shall include a separate list of each retirement system of each political subdivision which is not in conformity with the minimum funding standards specified by Code Section 47-20-10 and a separate attachment giving a full explanation of any action taken pursuant to subsection (b) of this Code section. (Code 1981, § 47-20-21, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, §§ 3, 4/SB 296.)

The 2010 amendment, effective July 1, 2010, in subsection (b), substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the middle and substituted “state treasurer” for “director” twice.

ARTICLE 4

RETIREMENT BILLS IN GENERAL ASSEMBLY

PART 1

GENERAL PROVISIONS

47-20-30. Definitions.

As used in this article, the term:

(1) “Amendment” means any amendment, including a substitute bill, made to a retirement bill by any committee of the House or Senate or by the House or Senate.

(2) “LC number” means that number preceded by the letters “LC” assigned to a bill by the Office of Legislative Counsel when that office prepares a bill for a member of the General Assembly.

(3) “Nonfiscal amendment” means an amendment to a retirement bill having a fiscal impact, which amendment does not change any factor of an actuarial investigation specified in subsection (a) of Code Section 47-20-36.

(4) “Nonfiscal retirement bill” means a retirement bill which does not affect the cost or funding factors of a retirement system or a retirement bill which affects such factors only in a manner which does not:

(A) Grant a benefit increase under the retirement system affected by the bill;

(B) Create an actuarial accrued liability for or increase the actuarial accrued liability of the retirement system affected by the bill; or

(C) Increase the normal cost of the retirement system affected by the bill.

(4.1) “Nonfiscal retirement bill” also means a retirement bill which removes or increases a mandatory retirement age of a retirement system or which removes or modifies provisions of a retirement system requiring forfeiture of benefits upon failure to retire upon reaching a mandatory retirement age or which provides for any combination of the foregoing.

(5) “Reduction in cost amendment” means an amendment to a retirement bill having a fiscal impact which reduces the cost of the bill as such cost is determined by the actuarial investigation for the bill prepared pursuant to Code Section 47-20-36.

(6) “Retirement bill having a fiscal impact” means any retirement bill creating or establishing a retirement system and any other retirement bill other than a nonfiscal retirement bill. Such term shall include any bill requiring a public retirement system to divest or refrain from investing in specific investments or classes of investments. (Code 1981, § 47-20-30, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1985, p. 146, § 1; Ga. L. 1986, p. 30, § 1; Ga. L. 1987, p. 240, § 2; Ga. L. 1990, p. 767, § 1; Ga. L. 2008, p. 1094, § 2/SB 327.)

The 2008 amendment, effective July 1, 2008, added the last sentence in paragraph (6).

47-20-31. Retirement bills must carry legislative counsel number when introduced; changes in bills prior to introduction.

No retirement bill may be introduced by any member of the General Assembly unless, at the time of its introduction, the bill has printed thereon

in the upper right portion of each page of the bill an LC number. Once a retirement bill is presented by the Office of Legislative Counsel to a member of the General Assembly, neither the Office of Legislative Counsel nor any person shall make any change in the retirement bill prior to its introduction into the General Assembly unless the bill is returned to the Office of Legislative Counsel and that office assigns a new LC number to the bill. (Code 1981, § 47-20-31, enacted by Ga. L. 1983, p. 1368, § 1.)

PART 2

NONFISCAL RETIREMENT BILLS

47-20-32. Prerequisites to introduction of nonfiscal retirement bill.

As a condition precedent to the introduction of any retirement bill, the member of the General Assembly who intends to be the primary sponsor of the bill must present an exact copy of the proposed bill, which must bear an LC number, to the state auditor. The state auditor shall determine whether the proposed bill is a retirement bill having a fiscal impact or a nonfiscal retirement bill and provide a written certification of that determination to the member of the General Assembly who intends to be the primary sponsor of the bill. Such certification shall specifically identify the proposed bill by reference to the LC number. If the proposed bill is introduced into the General Assembly, it shall have attached thereto the original of the certification of the state auditor. If the LC number on the bill as offered for introduction is different from the LC number shown on the state auditor's certification or if the bill as offered for introduction does not bear an LC number on each page of the bill, the bill may not be accepted for introduction by the Secretary of the Senate or the Clerk of the House of Representatives, and the bill may not be considered by any committee of the House or Senate or by the House or Senate. If the bill is certified as a retirement bill having a fiscal impact, its introduction shall also be limited by the provisions of subsection (a) of Code Section 47-20-34. (Code 1981, § 47-20-32, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1985, p. 146, § 2; Ga. L. 1991, p. 353, § 1.)

47-20-33. Amendment of a nonfiscal retirement bill.

(a) A nonfiscal retirement bill may be introduced at any time during the first 20 days of any regular session of the General Assembly. After its introduction into the General Assembly, a nonfiscal retirement bill may not be amended in any manner to cause the bill to become a retirement bill having a fiscal impact. Any amendment to such a bill shall be submitted to the state auditor by the chairman of the committee, if a committee amendment, or by the presiding officer of the Senate or House if the amendment was made by the Senate or House. If the state auditor certifies

in writing that the amendment does not cause the bill to become a retirement bill having a fiscal impact, the bill, as amended, may continue in the legislative process as any other bill. If the state auditor will not issue such a certification for the amendment, the bill's progress in the legislative process will end, and the bill shall not be considered further by either the House or the Senate, and, if passed by the General Assembly, the bill shall not become law and shall stand repealed in its entirety on the first day of July immediately following its enactment.

(b) An amendment to a nonfiscal retirement bill which is prohibited by subsection (a) of this Code section may be withdrawn by the committee which made the amendment, if a committee amendment, or by the Senate, if that body made the amendment, or by the House, if that body made the amendment. If the amendment is withdrawn, the bill may continue in the legislative process as any other bill, unless it is subsequently amended, and, in that event, this Code section shall apply to the subsequent amendment.

(c) A nonfiscal retirement bill which is not amended during the legislative process may be considered as any other bill. (Code 1981, § 47-20-33, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1987, p. 240, § 3; Ga. L. 1991, p. 353, § 2.)

PART 3

FISCAL RETIREMENT BILLS

47-20-34. Introduction of bill and preliminary consideration by committee.

(a) Any retirement bill having a fiscal impact may be introduced in the General Assembly only during the regular session which is held during the first year of the term of office of members of the General Assembly. Any such retirement bill may be passed by the General Assembly only during the regular session which is held during the second year of the term of office of members of the General Assembly.

(b) When a retirement bill having a fiscal impact is introduced, it shall be assigned by the presiding officer of the Senate or the House, as the case may be, to the respective Senate or House standing committee on retirement. If a majority of the total membership of the respective committee is opposed to the bill on its merits, no actuarial investigation provided for in Code Section 47-20-36 shall be necessary, and the bill shall not be reported out by the committee and shall not be adopted or considered by the House or Senate. If a majority of the committee wishes to consider the bill further and votes in favor of an actuarial investigation of the bill, an actuarial investigation shall be required as provided in Code Section 47-20-36. Except as otherwise provided by subsection (c) of this Code section, no retirement bill having a fiscal impact may be reported out of the committee to which

it is assigned or may be considered or adopted by the House or Senate unless an actuarial investigation of the bill is made.

(c) The committee to which a retirement bill having a fiscal impact is assigned following its introduction may at any time amend the bill to become a nonfiscal retirement bill. If the bill is so amended, an exact copy of the amended version shall be submitted by the chairman of the committee to the state auditor. If the state auditor issues a written certification that the committee amendment has converted the status of the bill to a nonfiscal retirement bill, the bill shall be a nonfiscal retirement bill for all purposes under this chapter as of the date of the state auditor's certification. Only the committee to which a retirement bill having a fiscal impact is originally assigned following its introduction may convert the bill to a nonfiscal retirement bill as authorized in this subsection.

(d) Any bill requiring a public retirement system to divest or refrain from investing in specific investments or classes of investments may only be introduced as provided in subsection (a) of this Code section and, in addition to the certification of the state auditor required by Code Section 47-20-32, such legislation shall be accompanied at the time of introduction by a statement from the Governor, the Lieutenant Governor, or the Speaker of the House of Representatives describing the primary goal the bill is designed to achieve. Such bill shall also have attached at the time of introduction a fiscal analysis from each public retirement system affected stating the cost of compliance with the legislation and the anticipated annual fiscal losses which will be incurred as a result of complying with the legislation. (Code 1981, § 47-20-34, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1991, p. 353, § 3; Ga. L. 2008, p. 1094, § 3/SB 327.)

The 2008 amendment, effective July 1, 2008, added subsection (d).

47-20-35. Perfection of bill by committee; actuarial investigation.

(a) A retirement bill having a fiscal impact which the committee wishes to consider shall first be perfected, if necessary, by the committee. The committee may delay further consideration of the bill until after the close of the regular session during which the bill was introduced, but the committee shall complete its consideration of the bill for submission to the state auditor under Code Section 47-20-36 by not later than July 15 immediately following the close of the legislative session. The committee shall be authorized to meet for not more than five days, unless additional days are authorized by the President of the Senate for the Senate committee or by the Speaker of the House for the House committee, during the period beginning with the day following the close of the session and ending on July 1 immediately following the close of the session for the purpose of considering and perfecting the bill. If the bill originated in the Senate, the House Committee on Retirement shall be authorized to meet with the

Senate Committee on Retirement to consider and perfect a bill during the period following the close of a regular session, and, if the bill originated in the House, the Senate Committee on Retirement shall have the same authority. The committees may adopt such procedures as they find appropriate for conducting meetings at which both committees are present as authorized by this subsection. For attending meetings of their respective committees as authorized by this subsection, the members of the Senate and House committees on retirement shall receive the expenses and allowances provided by law for members of legislative interim committees. If a retirement bill having a fiscal impact is changed by the committee to which it is assigned, such change shall be accomplished only by a substitute bill, and no committee amendment to the bill, except by substitute, shall be authorized.

(b) Immediately after a retirement bill having a fiscal impact has been considered and perfected as provided in subsection (a) of this Code section, the chairman of the committee to which the bill was assigned shall transmit an exact copy of the bill, as perfected by the committee, when applicable, to the state auditor. The copy submitted to the state auditor shall bear an LC number. The submission of the bill to the state auditor shall have attached thereto a letter signed by the chairman of the committee requesting the state auditor to make or cause to be made an actuarial investigation on the bill. (Code 1981, § 47-20-35, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1987, p. 240, § 4; Ga. L. 1990, p. 767, § 2.)

47-20-36. Scope of actuarial investigation; certificate and summary of investigation attached to bill.

(a) If an actuarial investigation of a retirement bill having a fiscal impact is requested under Code Section 47-20-35, it shall be the duty of the state auditor to complete or cause to be completed such actuarial investigation by not later than November 1 of the same year during which the request for the actuarial investigation was made. The actuarial investigation shall include, but shall not be limited to, findings on the following factors as such factors are relevant to the retirement bill under consideration:

(1) The dollar amount of the unfunded actuarial accrued liability which will result from the bill for the retirement system affected by the bill;

(2) The dollar amount of the annual normal cost which will result from the bill for the retirement system affected by the bill;

(3) A statement of the employer contribution rate currently in effect for the retirement system affected by the bill;

(4) A statement of the employer contribution rate, which must be in conformity with the minimum funding standards specified by Code

Section 47-20-10, recommended for the retirement system affected by the bill; and

(5) A statement of the dollar amount of the increase in the annual employer contribution, if an existing retirement system is affected by the bill, or a statement of the total annual employer contribution, if a new retirement system is established by the bill, which will be necessary to maintain the retirement system affected or established by the bill in an actuarially sound condition.

(b) By not later than November 1 of the same year that the request for an actuarial investigation was made, the completed actuarial investigation shall be submitted by the state auditor to the chairman of the committee who requested it along with a summary of the actuarial investigation which shall include the relevant findings specified in subsection (a) of this Code section.

(c) The chairman of the committee, upon receipt of the information provided for under subsection (b) of this Code section, shall cause the summary of the actuarial investigation to be printed by the Secretary of the Senate or the Clerk of the House of Representatives, depending on whether the bill is a Senate bill or House bill, in sufficient quantity to attach a copy thereof to all printed copies of the bill. The original summary of the actuarial investigation shall be attached by the Secretary of the Senate or Clerk of the House of Representatives to the original version of the substitute bill, as perfected by the committee under Code Section 47-20-35, if applicable, or to the original version of the bill as introduced if the bill was not changed by the committee prior to its submission to the state auditor for an actuarial investigation. (Code 1981, § 47-20-36, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1987, p. 240, § 5; Ga. L. 1990, p. 767, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, the word “of” was deleted following “original” the first time such word appears in the second sentence of subsection (c).

47-20-37. Consideration of bill on the floor; approval of amendments by state auditor; effect of passing bill in violation of this article.

(a) When a retirement bill having a fiscal impact has had an actuarial investigation pursuant to Code Section 47-20-36, the bill may be considered at the next regular session of the General Assembly. If the bill as originally introduced was not changed by the committee and the original version was submitted to the state auditor for an actuarial investigation, then the original version of the bill is the only one, except as otherwise provided by subsection (b) of this Code section, which may be considered by any committee or by the House or Senate. If the original bill was substituted by the committee and the substitute version was the one submitted to the state auditor, then that substitute bill is the only one, except as otherwise

provided by subsection (b) of this Code section, which may be considered by any committee or by the House or Senate.

(b) After completion of an actuarial investigation, any amendment to a retirement bill having a fiscal impact shall be out of order and shall not be allowed either by a committee or by the House or Senate, except for a nonfiscal or a reduction in cost amendment. Any amendment to a retirement bill having a fiscal impact shall be submitted to the state auditor by the chairperson of the committee, if a committee amendment, or by the presiding officer of the Senate or House if the amendment was made by the Senate or House. If the state auditor certifies in writing that the amendment is a nonfiscal amendment or if the amendment results in a reduction in cost and the state auditor provides an actuarial investigation as required in subsection (a) of Code Section 47-20-36, then the bill as amended, with the state auditor's certification or actuarial investigation attached to the original of the amendment, may continue in the legislative process. If the state auditor will not issue such a certification for the amendment or if there is no actuarial study showing the reduced cost of the amendment, the bill's progress in the legislative process will end, and the bill shall not be considered further by either the House or Senate and, if passed by the General Assembly, the bill shall not become law and shall stand repealed in its entirety on the first day of July immediately following its enactment.

(c) An amendment to a retirement bill having a fiscal impact which is prohibited by subsection (b) of this Code section may be withdrawn by the committee which made the amendment, if a committee amendment, or by the Senate, if that body made the amendment, or by the House, if that body made the amendment. If the amendment is withdrawn, the bill may continue in the legislative process as any other bill, unless it is subsequently amended, and, in that event, this Code section shall apply to the subsequent amendment. (Code 1981, § 47-20-37, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1987, p. 240, § 6; Ga. L. 1995, p. 331, § 1.)

ARTICLE 5

ADMINISTRATION

47-20-50. Effective date of enacted retirement bill with fiscal impact; unfunded enacted bills; requirements for retirement bills having fiscal impact.

(a) Any retirement bill having a fiscal impact which is enacted by the General Assembly and which is approved by the Governor or which otherwise becomes law shall become effective on the first day of July immediately following the regular session during which it was enacted, but only if the enacted bill is concurrently funded as provided by this Code section. If an enacted bill, including one approved by the Governor, is not

concurrently funded as required by this Code section, then such bill may not become effective as law and shall be null, void, and of no force and effect and shall stand repealed in its entirety on the first day of July immediately following its enactment.

(b) When a retirement bill having a fiscal impact amends a retirement system having employer contributions funded from appropriations by the General Assembly, then appropriations for the first fiscal year of effectiveness of the bill, after it becomes law, must include funds to pay the amount determined by the actuarial investigation under paragraph (5) of subsection (a) of Code Section 47-20-36 or subsection (b) of Code Section 47-20-37, and future appropriations for subsequent fiscal years must include an amount necessary to maintain the actuarial soundness of the retirement system in accordance with the findings of the actuarial investigation. Any limitation on the rate of employer contributions that may be included in a law which is the source of authority for a retirement system affected by this subsection shall be amended to the extent necessary to comply with the requirements of this subsection.

(c) When a retirement bill having a fiscal impact amends a retirement system having employer contributions funded from portions of fines and forfeitures, then, if necessary to produce funds to pay the amount determined by actuarial investigation under paragraph (5) of subsection (a) of Code Section 47-20-36, either:

(1) The retirement bill having a fiscal impact or parallel legislation, which must become effective concurrently with the retirement bill, must revise the portion of fines and forfeitures designated for employer contributions to pay the amount determined under paragraph (5) of subsection (a) of Code Section 47-20-36; or

(2) The General Assembly by direct appropriations must supplement employer contributions from fines and forfeitures to the extent necessary to pay the amount determined under paragraph (5) of subsection (a) of Code Section 47-20-36.

(d) When a retirement bill having a fiscal impact amends a retirement system having employer contributions funded from the designation of the proceeds of a tax imposed by law, then either:

(1) The retirement bill having a fiscal impact or parallel legislation, which must become effective concurrently with the retirement bill, must revise the tax as necessary to pay the amount determined under paragraph (5) of subsection (a) of Code Section 47-20-36; or

(2) The General Assembly by direct appropriation must supplement employer contributions from the tax to the extent necessary to pay the amount determined under paragraph (5) of subsection (a) of Code Section 47-20-36.

(e) When a retirement bill having a fiscal impact amends a retirement system having employer contributions funded wholly or partially from the funds of a political subdivision, that political subdivision shall have a duty to produce funds as necessary to pay all or its proportionate share of the amount determined by actuarial investigation under paragraph (5) of subsection (a) of Code Section 47-20-36.

(f) When a retirement bill having a fiscal impact creates a new retirement system, then employer contributions in conformity with the minimum funding standards of Code Section 47-20-10 and in conformity with paragraph (5) of subsection (a) of Code Section 47-20-36 must be made to the retirement system either by direct appropriations by the General Assembly or by another source of employer contributions specifically provided for in the bill creating the new retirement system. (Code 1981, § 47-20-50, enacted by Ga. L. 1983, p. 1368, § 1; Ga. L. 1987, p. 240, § 7; Ga. L. 1995, p. 331, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Construction with other law. — Provision of O.C.G.A. § 47-20-50(a), requiring that retirement bills be concurrently funded, and Ga. L. 2006, p. 117, § 2, requiring a specific determination of concurrent funding regarding O.C.G.A. § 47-17-71, do not repeal § 47-17-71. 2006 Op. Att’y Gen. No. 2006-4.

47-20-50.1. Report of funding of retirement bills having a fiscal impact; publication.

(a) Following the close of each regular legislative session during which retirement bills having a fiscal impact may be enacted, the state auditor shall make a determination for each such bill enacted during such session, which is not vetoed by the Governor, of whether or not provision has been made for the concurrent funding of the bill in conformity with the applicable requirements of Code Section 47-20-50.

(b) The director of the Office of Planning and Budget, the legislative budget analyst, retirement system administrators, and employers shall provide such information and assistance as may be necessary for the state auditor to make the determinations required by subsection (a) of this Code section.

(c) The state auditor shall make the determinations required by subsection (a) of this Code section by not later than the fifteenth day immediately following the last day on which the Governor is authorized to veto bills following the close of each regular legislative session. The state auditor’s findings shall be made in a report to the Secretary of State showing the determination for each retirement bill by reference to the respective Senate or House number for the bill. The report shall be submitted to the Secretary of State by not later than the last day on which the state auditor is required to make the determinations. The Secretary of State shall cause

the state auditor's report to be printed in the annual session laws of the State of Georgia. (Code 1981, § 47-20-50.1, enacted by Ga. L. 1987, p. 240, § 8; Ga. L. 1989, p. 52, § 1.)

47-20-51. Accrued retirement benefits are not created, enhanced, or diminished by this chapter.

No provision of this chapter generally and no provision of Code Section 47-20-50 in particular shall:

(1) Create or be construed to create a contractual right to a retirement benefit or a contractual right in the provisions of a retirement system law which does not exist independently of the provisions of this chapter; and

(2) Impair, alter, or diminish or be construed to impair, alter, or diminish a contractual right to a retirement benefit or a contractual right in the provisions of a retirement system law which exists independently of the provisions of this chapter. (Code 1981, § 47-20-51, enacted by Ga. L. 1983, p. 1368, § 1.)

ARTICLE 6

MISCELLANEOUS

47-20-60. State auditor authorized to provide personnel to carry out duties under chapter; funds authorized; cooperation of state officials, agencies, and employees.

(a) The state auditor shall be authorized to employ or contract with actuaries and other personnel to carry out the duties assigned to that officer by this chapter. Upon their approval by the Legislative Services Committee, expenses incurred by the state auditor in carrying out such duties shall be paid from funds appropriated or available to the legislative branch of the state government. When authorized to do so by the Legislative Services Committee, and such authorization may be on a continuing basis by direction of the Legislative Services Committee entered upon its minutes, the legislative fiscal officer, upon certification by the state auditor of expenses incurred to carry out the duties assigned to that officer by this chapter, is authorized to expend legislative funds to pay such expenses.

(b) Retirement system administrators, state officials and employees, and officials and employees of political subdivisions are authorized and directed to cooperate with and assist the state auditor in carrying out the duties assigned to that officer by this chapter. (Code 1981, § 47-20-60, enacted by Ga. L. 1983, p. 1368, § 1.)

47-20-61. Certificates and summaries of actuarial investigations attached to enrolled Act.

The enrolled Act resulting from a bill which is subject to the legislative procedures provided by this chapter shall have attached thereto the original or a true and correct copy of all certificates and summaries of actuarial investigations submitted by the state auditor pursuant to the requirements of this chapter. (Code 1981, § 47-20-61, enacted by Ga. L. 1983, p. 1368, § 1.)

47-20-62. Effective date of chapter; consideration of fiscal retirement bills by 1984 regular session.

This chapter shall become effective on January 1, 1984. Only nonfiscal retirement bills may be introduced at the 1984 regular session of the General Assembly. Retirement bills having a fiscal impact which were introduced at the 1983 regular session and which are still pending at the 1984 regular session shall be subject to the requirements of Code Section 47-20-50, except that the amount determined by actuarial investigation under paragraph (10) of subsection (a) of Code Section 47-20-36 shall be determined by the director of the Office of Planning and Budget and the state auditor pursuant to Code Sections 28-5-42 and 28-5-43, relating to fiscal notes. (Code 1981, § 47-20-62, enacted by Ga. L. 1983, p. 1368, § 1.)

47-20-63. Requirements for exempting bills regarding Georgia Firemen's Pension Fund from chapter provisions.

Repealed by Ga. L. 1994, p. 315, § 1, effective July 1, 1994.

Editor's notes. — This Code section was based on Ga. L. 1989, p. 48, § 1, and Ga. L. 1991, p. 130, § 1.

47-20-64. Exemption for 1991 bill amending Code Section 47-1-30.

Repealed by Ga. L. 1994, p. 315, § 2, effective July 1, 1994.

Editor's notes. — This Code section was based on Ga. L. 1991, p. 356, § 1.

ARTICLE 7**PUBLIC RETIREMENT SYSTEMS INVESTMENT AUTHORITY LAW****47-20-80. Short title.**

This article shall be known and may be cited as the "Public Retirement Systems Investment Authority Law." (Code 1981, § 47-20-80, enacted by Ga. L. 2000, p. 2, § 2.)

47-20-81. Fund defined; applicability.

(a) As used in this article, the term “fund” means the investment fund of any public retirement system or pension system supported wholly or partially from public funds. Such term shall include any pool of such funds for investment purposes.

(b) The provisions of this article shall not apply to political subdivisions which contract with an association of like political subdivisions for the pooling of assets; provided, however, that the provisions of this article shall apply to such association. (Code 1981, § 47-20-81, enacted by Ga. L. 2000, p. 2, § 2.)

47-20-82. Investing funds; eligibility; investment limitation.

(a) Funds shall invest in or lend their assets on the security of, and shall hold as invested assets, only eligible investments as prescribed in this article.

(b) Eligibility of an investment shall be determined as of the date of its making or acquisition.

(c) Any investment limitation based upon the amount of the fund’s assets shall relate to such assets on the basis of the assets’ aggregate historical cost. (Code 1981, § 47-20-82, enacted by Ga. L. 2000, p. 2, § 2.)

47-20-83. Certificated or uncertificated forms of investment; real estate investments.

(a) Subject to limitations stated in this article, funds may invest in the following in certificated or uncertificated form:

(1) Corporations or obligations of corporations organized under the laws of this state or any other state or under the laws of Canada, but only if the corporation has a market capitalization equivalent to \$100 million; provided, however, that except as provided in Code Section 47-20-84, no fund shall invest in corporations or in obligations of corporations organized in a country other than the United States or Canada; provided, further, that such obligation shall be listed as investment grade by a nationally recognized rating agency. For purposes of this paragraph, a corporation organized under the laws of a country other than the United States or Canada shall be deemed to be organized under the laws of this state or another state unless it is a private foreign issuer within the meaning of United States Securities and Exchange Commission Rule 3b-4, 17 C.F.R. Section 240.3b-4, as such appears on July 1, 2007; this will not include any investment with any corporation that is included in the terrorism sanctions issued by the Office of Foreign Assets Control of the United States Department of the Treasury pursuant to Executive Order 13224 signed by the President of the United States on September 23, 2001;

(2) Repurchase and reverse repurchase agreements for direct obligations of the United States government and for obligations unconditionally guaranteed by agencies of the United States government and for investments eligible under paragraph (1) of this subsection;

(3) Cash assets or deposits in checking or savings accounts under certificates of deposit or in other form in banks and trust companies and in savings accounts, certificates of deposit, or similar certificates or evidences of deposits in savings and loan associations and building and loan associations which have qualified for the insurance protection afforded by the Federal Deposit Insurance Corporation;

(4) Bonds, notes, warrants, and other evidence of indebtedness which are direct obligations of the government of the United States of America or for which the full faith and credit of the government of the United States of America is pledged for the payment of principal and interest;

(5) Loans guaranteed as to principal and interest by the government of the United States of America, or by any agency or instrumentality of the government of the United States of America, to the extent of such guaranty;

(6) Taxable bonds, notes, warrants, and other securities not in default which are the direct obligations of any state of the United States or of the District of Columbia, or of the government of Canada or any province of Canada, or for which the full faith and credit of such state, district, government, or province has been pledged for the payment of principal and interest;

(7) Bonds, notes, warrants, and other securities not in default which are the direct obligations of the government of any foreign country which the International Monetary Fund lists as an industrialized country and for which the full faith and credit of such government has been pledged for the payment of principal and interest, provided such securities are listed as investment grade by a nationally recognized rating agency;

(8) Bonds, debentures, or other securities issued or insured or guaranteed by any agency, authority, unit, or corporate body created by the government of the United States of America whether or not such obligations are guaranteed by the United States;

(9) Collateralized mortgage obligations that are listed as investment grade by a nationally recognized rating agency;

(10) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the International Financial Corporation;

(11) In addition to those investments eligible under paragraph (1) of this subsection, bonds, debentures, notes, and other evidences of indebt-

edness issued, assumed, or guaranteed by any solvent institution existing under the laws of the United States of America or of Canada, or any state or province thereof, which are not in default as to principal or interest and which are secured by collateral worth at least 50 percent more than the par value of the entire issue of such obligations, but only if not more than one-third of the total value of the required collateral consists of common stocks;

(12) In addition to those investments eligible under paragraph (1) of this subsection, secured and unsecured obligations of issuers described in paragraph (11) of this subsection other than the obligations described in paragraph (11) of this subsection, bearing interest at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the issuing, assuming, or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the fund have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during either of the last two years of the period of such net earnings have been not less than one and one-half times its fixed charges for the year; provided, however, that any such obligation shall be listed as investment grade by a nationally recognized rating agency;

(13) In addition to those investments eligible under paragraph (1) of this subsection, equipment trust obligations or certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States of America, and the right to receive determinated portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment;

(14) Loans that are secured by pledge or securities eligible for investment under this article;

(15) Purchase money mortgages or like securities received upon the sale or exchange of real property acquired;

(16) In addition to those investments eligible under paragraph (1) of this subsection, a mortgage or a mortgage participation, pass-through, conventional pass-through, trust certificate, or other similar security which represents an undivided, beneficial interest in a pool of loans secured by first mortgages, deeds of trust, or deeds to secure debt upon fee simple, unencumbered, improved, or income-producing real property located in the United States or Canada, which is improved with a residential building or condominium unit or buildings designed for occupancy by not more than four families, including leasehold estates in such real estate if such first mortgages, deeds of trust, or deeds to secure debt are fully guaranteed or insured by the Federal Housing Administration, the United States Department of Veterans Affairs, the Farmers Home Administration, the Federal Home Loan Mortgage Corporation,

the Government National Mortgage Association, the Federal National Mortgage Association, or any similar governmental entity or instrumentality;

(17) Land and buildings on such land used or acquired for use as a fund's office for the convenient transaction of its own business; provided, however, that portions of such buildings not used for its own business may be rented by the fund to others; provided, further, that the amount invested by a fund in office property shall not exceed 10 percent of the retirement system assets;

(18) Real property acquired in satisfaction in whole or in part of loans, mortgages, liens, judgments, decrees, or debts previously owing to the fund in the course of its business;

(19) Real property acquired in part payment of the consideration on the sale of other real property owned by the fund if such transaction effects a net reduction in the fund's investment in real estate;

(20) Real property acquired by gift or devise, or through merger or consolidation with another fund;

(21) Additional real property and equipment incident to real property if necessary or convenient for the enhancement of the marketability or sale value of real property previously acquired or held by the fund under paragraphs (18), (19), and (20) of this subsection; and

(22) Business entities organized under the laws of this state or any other state or under the laws of Canada, but only if the business entity has a minimum market capitalization equivalent to \$100 million and if the business entity has elected to be taxed and continues to qualify as a real estate investment trust under Section 856 through Section 860 of the federal Internal Revenue Code, 26 U.S.C. Section 856 through Section 860; provided, however, that except as provided in Code Section 47-20-84, no fund shall invest in business entities organized in a country other than the United States or Canada.

(b) Notwithstanding the provisions of subsection (a) of this Code section, the Georgia Municipal Employees Benefit System and any association of like political subdivisions which contracts with its members for the pooling of assets may invest up to 5 percent of the total assets of its fund in real estate; provided, however, that in the event the fund's assets decrease in value, the association shall be entitled to retain all real estate investments if owned prior to the reduction in value of assets; provided, further, that any such association shall be entitled to retain all real estate assets it owned on July 1, 1999, without regard to the limitation imposed by this subsection. (Code 1981, § 47-20-83, enacted by Ga. L. 2000, p. 2, § 2; Ga. L. 2001, p. 21, § 1; Ga. L. 2007, p. 115, §§ 1, 2/HB 318; Ga. L. 2009, p. 368, § 1/SB 48.)

The 2009 amendment, effective April 30, 2009, part of an Act to revise, modernize, and correct this title, revised punctuation in paragraph (a)(1).

47-20-83.1. (Repealed effective July 1, 2015) Definitions; identification of scrutinized companies where public funds held; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; reporting.

(a) As used in this Code section, the term:

(1) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association that exists for the purpose of making profit.

(2) “Direct holdings” in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(3) “Government of Iran” means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(4) “Inactive business activities” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(5) “Indirect holdings” in a company means all securities of that company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this Code section.

(6) “Iran” means the Islamic Republic of Iran.

(7) “Petroleum resources” means petroleum or natural gas.

(8) “Public fund” means a large retirement system as defined in Code Section 47-20-84.

(9) “Scrutinized business activities” means business activities that have resulted in a company becoming a scrutinized company.

(10) “Scrutinized company” means any company that has, with actual knowledge, on or after August 5, 1996, made an investment of \$20 million or more in Iran’s petroleum sector which directly or significantly contributes to the enhancement of Iran’s ability to develop the petroleum resources of Iran.

(11) “Substantial action specific to Iran” means adopting, publicizing, and implementing a formal plan to cease scrutinized business activities within one year and to refrain from any such new business activities.

(b) On or before October 1, 2008, each public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings. Such efforts include reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies that have invested more than \$20 million in any given year since August 5, 1996, in Iran's petroleum energy sector, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(c) By the first meeting of each board responsible for the management of a public fund after October 1, 2008, the board shall assemble all scrutinized companies that fit the criteria specified in paragraph (10) of subsection (a) of this Code section into a "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List."

(d) The board of each public fund shall update and make publicly available annually the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List based on evolving information from, among other sources, those listed in subsection (b) of this Code section.

(e) Each public fund shall adhere to the following procedure for assembling companies on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

(1) For each company in which the public fund has direct holdings newly identified under subsection (c) of this Code section, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund. The notice must inform the company of the opportunity to clarify its Iran related activities and encourage the company, within 90 days, to cease its scrutinized business activities or convert such activities to inactive business activities in order to avoid qualifying for divestment by the public fund. Such notice shall be sent no later than December 15, 2008; and

(2) If, within 90 days after the public fund's first engagement with a company pursuant to this subsection, that company announces by public disclosure substantial action specific to Iran, the public fund may maintain its direct holdings, but the company shall remain on the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List pending completion of its cessation of scrutinized business activities.

(f)(1) If, after 90 days following a public fund's first engagement with a company pursuant to subsection (e) of this Code section, the company has not announced by public disclosure substantial action specific to Iran, or the public fund determines or becomes aware that the company continues to have scrutinized business activities, the public fund within eight months after the expiration of such 90 day period shall sell, redeem, divest, or withdraw all publicly traded securities of the company from the public fund's direct holdings.

(2) If the public fund determines or becomes aware that a company that ceased scrutinized business activities following engagement pursuant to subsection (e) of this Code section has resumed such activities, the public fund shall send a written notice to the company in accordance with subsection (e) and this subsection. The company shall also be immediately reintroduced onto the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List.

(3) The public fund shall monitor the scrutinized company that has announced by public disclosure substantial action specific to Iran and, if, after one year, the public fund determines or becomes aware that the company has not implemented such a plan, within three months after the expiration of such one-year period shall sell, redeem, divest, or withdraw all publicly traded securities of the company from the public fund's direct holdings, and the company also shall be immediately reintroduced onto the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List.

(g) A public fund shall not acquire securities of companies on the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List.

(h) Subsections (f) and (g) of this Code section shall not apply to a public fund's indirect holdings. However, the public fund shall submit letters to the managers of such investment funds containing companies on the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund devoid of such securities or if such funds are created elsewhere, the board of the public fund shall determine within six months whether to replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards. For the purposes of this subsection, a private equity fund is deemed to be an actively managed investment fund.

(i) Notwithstanding any other provision of this Code section, the public fund, when discharging its responsibility for operation of a defined contribution plan, shall engage the manager of the investment offerings in such plans requesting that they consider removing scrutinized companies from the investment offerings or create an alternative investment offering devoid of scrutinized companies. If the manager creates an alternative investment offering or if such funds are created elsewhere and is deemed by the public fund to be consistent with prudent investor standards, the public fund shall, within six months, consider including such investment offering in the plan.

(j) Each public fund shall file a report with the Governor, the President of the Senate, and the Speaker of the House of Representatives that

includes the Scrutinized Companies with Activities in Iran Petroleum Energy Sector List within 30 days after the list is created. This report shall be made available to the public. Annually thereafter the board responsible for the management of a public fund shall file a report, which shall be made available to the public and to the Governor, the President of the Senate, and the Speaker of the House of Representatives, which includes:

(1) A summary of correspondence with companies engaged by the public fund under this Code section;

(2) All investments sold, redeemed, divested, or withdrawn in compliance with this Code section;

(3) All prohibited investments under this Code section;

(4) Any progress made under subsection (h) of this Code section; and

(5) A list of all publicly traded securities held directly by the public fund.

(k) If any of the following occur, this Code section shall be of no further force or effect:

(1) The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to pursue the capabilities to develop nuclear weapons and support international terrorism;

(2) The United States revokes all sanctions imposed against the government of Iran; or

(3) The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this Code section interferes with the conduct of United States foreign policy.

(l) With respect to actions taken in compliance with this Code section, including all good faith determinations regarding companies as required by this Code section, the public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations with respect to choice of asset managers, investment funds, or investments for the public fund's securities portfolios.

(m) Neither the retirement system nor any employee of the retirement system shall be liable for a good faith omission in identifying a scrutinized company.

(n) The state treasurer shall annually prepare a list of scrutinized companies as otherwise required by this Code section. The list shall be made available to each public fund in Georgia and each such fund may rely

on said list in meeting the requirements of this Code section. (Code 1981, § 47-20-83.1, enacted by Ga. L. 2008, p. 1022, § 3/SB 451; Ga. L. 2010, p. 863, § 3/SB 296.)

Effective date. — This Code section became effective July 1, 2008.

The 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the first sentence of subsection (n).

Editor’s notes. — Ga. L. 2008, p. 1022, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Protecting Georgia’s Investments Act.’”

Ga. L. 2008, p. 1022, § 2, not codified by the General Assembly, provides: “The General Assembly finds that:

“(1) In 2001, the federal Securities and Exchange Commission determined that companies with business operations in terrorist-sponsored states are exposed to a special risk category known as global security risk: the risk to share value and corporate reputation stemming from the intersection of a publicly traded company’s international business activities and security-related concerns, such as terrorism and weapons proliferation;

“(2) In response to the financial risk posed by investments in companies doing business with a state that sponsors terrorists, the federal Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies;

“(3) According to the former chair of the federal Securities and Exchange Commission Laura Unger, the fact that a foreign company is doing material business with a country, government, or entity on OFAC’s sanctions list is, in the view of the staff of the federal Securities and Exchange Commission, substantially likely to be significant to a reasonable investor’s decision about whether to invest in that company;

“(4) A 2006 report by the United States House of Representatives Committee on Appropriations states that ‘a company’s association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a

public company’s activities, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment’;

“(5) Iran tops the United States State Department’s list of state sponsors of terrorism, funding such groups as Hamas, Hezbollah, and Islamic Jihad, as well as fueling the insurgency in Iraq via its Al-Quds force;

“(6) The United States imposed sanctions on Iran by designating the Islamic Revolutionary Guard Corps, its Al-Quds Force, and three state-owned banks as weapons proliferators and supporters of terrorism;

“(7) The United Nations Security Council has twice voted unanimously to impose sanctions on Iran for its failure to suspend its uranium-enrichment activities calling for an additional embargo on Iranian arms exports, which is a freeze on assets abroad of an expanded list of individuals and companies involved in Iran’s nuclear and ballistic missile programs, and calls for nations and institutions to bar new grants or loans to Iran except for humanitarian and developmental purposes;

“(8) Foreign entities have invested in Iran’s petroleum energy sector despite United States and United Nations sanctions against Iran;

“(9) All entities that have invested more than \$20 million in any given year in Iran’s petroleum sector since August 5, 1996, are subject to sanctions under United States law pursuant to the Iran Sanctions Act of 1996;

“(10) The United States renewed the Iran Sanctions Act of 1996 in 2001 and 2006;

“(11) It is a fundamental responsibility of the State of Georgia to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors;

“(12) While divestiture should be considered with the intent to improve investment performance, by the rules of prudence, fiduciaries must take into account all relevant substantive factors in arriving at an investment decision;

“(13) The State of Georgia is deeply con-

cerned about investments in publicly traded companies that have investments in Iran's petroleum sector as a financial risk to the shareholders;

“(14) By investing in publicly traded companies having investments in Iran's petroleum sector, public retirement systems are putting their funds at substantial financial risk;

“(15) Divestiture from markets that are vulnerable to embargo, loan restrictions, and sanctions from the United States and the international community, including the United Nations Security Council, is in accordance with the rules of prudence;

“(16) This Act should remain in effect only insofar as it continues to be consistent with and does not unduly interfere with the foreign policy of the United States as determined by the federal government;

“(17) To protect Georgia's assets, it is in the best interest of the state to enact a statutory prohibition regarding the investments managed by public retirement systems doing business in Iran's petroleum-energy sector;

“(18) Nevertheless, the members of this

body have serious concerns regarding the efficacy of requiring the divestment of Georgia's retirement funds in large companies with fiscally sound histories and enviable histories of returns, and whether any effect on world-wide business activities might be too insubstantial as to warrant the cost to the state and to public retirees of divestment;

“(19) Further, the members of this body are concerned about the cost of compliance, both in terms of the necessity of employing additional administrative staff to ferret certain companies out of the investment pool and in the potential for lost investment revenue caused by a possibly ineffective but costly investment policy; and

“(20) The members of this body have faith that the boards of trustees and investment managers of our public retirement systems are patriotic Americans who would not aid or assist terrorism in any manner, and that restrictive and potentially costly micro-managing by this body is unnecessary.”

Ga. L. 2008, p. 1022, § 3.1, provides for the repeal of this Code section effective July 1, 2015.

47-20-84. Large retirement systems.

(a) As used in this Code section, the term “large retirement system” means:

(1) Any retirement system created by this title which has an accumulated unfunded actuarial accrued liability not greater than 25 percent of the total of its assets;

(2) The Georgia Municipal Employees Benefit System created by Chapter 5 of this title;

(3) Any association of like political subdivisions which, on, before, or after July 1, 1999, contracts with its members for the pooling of assets;

(4) Any public retirement system other than a retirement system defined in paragraphs (1), (2), and (3) of this subsection which meets the following criteria:

(A) The retirement system has:

(i) An accumulated unfunded actuarial liability not greater than 25 percent of the total of its assets; or

(ii) Assets in excess of \$50 million and an accumulated unfunded actuarial liability not greater than 30 percent of the total of its assets;

(B) The retirement system provides a defined benefit plan;

(C) The retirement system investments are managed by one or more independent professional investment managers recognized by the National Association of Securities Dealers and the United States Securities and Exchange Commission and which adhere to the code of ethical standards and conduct of the Association for Investment Management and Research; and

(D) The retirement system investments are limited to those equities of investment grade quality or better, provided that leverage techniques, option techniques, futures, commodities, private placements, and direct participation plans may not be used in making equity investments; and

(5) Any public retirement system which has more than \$200 million in assets.

(b) A large retirement system may invest in corporations or in obligations of corporations organized in a country other than the United States or Canada subject to the provisions of paragraph (1) of subsection (a) of Code Section 47-20-83.

(c) A fund shall not invest more than 55 percent of retirement system assets in equities; provided, however, that prior to July 1, 2010, a large retirement system shall invest not more than 65 percent of its assets in equities; on and after July 1, 2010, a large retirement system shall invest not more than 70 percent of its assets in equities; and on and after July 1, 2011, a large retirement system shall invest not more than 75 percent of its assets in equities; provided, further, that no fund shall increase its assets in equities through purchase by more than 20 percent in any fiscal year. Any fund which is not in compliance with the limitations imposed by this subsection shall be granted a two-year period to come into compliance; provided, however, that during such two-year period, the fund shall not increase the percentage of its assets invested in equities.

(d) Subject to all other limitations in this chapter, a large retirement system may invest in securities issued by a unit investment trust or an open-end company:

(1) That is listed on a securities exchange;

(2) The assets of which consist of securities managed so that the fund replicates a listed index or specific market sector;

(3) In which continuous markets are quoted by market makers in the applicable unit investment trust or open-end company; and

(4) That has the capability of creating or redeeming shares as necessary to reflect demand.

(e) A large retirement system may enter into contracts, agreements, and other instruments designed to manage risk exposure. (Code 1981, § 47-20-84, enacted by Ga. L. 2000, p. 2, § 2; Ga. L. 2001, p. 21, § 1; Ga. L. 2005, p. 500, § 1/HB 319; Ga. L. 2007, p. 115, §§ 3, 4/HB 318; Ga. L. 2009, p. 130, § 1/HB 371.)

The 2009 amendment, effective April 21, 2009, in subsection (a), deleted “and” at the end of paragraph (a)(3), rewrote subparagraph (a)(4)(A), added “and” at the end of subparagraph (a)(4)(C), deleted subparagraph (a)(4)(E), which read: “Has an accumulated unfunded actuarial liability not greater than 25 percent of the total of its assets”, and added paragraph (a)(5); in subsection (b), substituted “may invest” for “may not invest more than 15 percent of the retirement system assets” near the beginning; in the first sentence of subsection (c), inserted “prior to July 1, 2010;”, substituted “65 percent” for “60 percent”, and added “; on and after July 1, 2010, a large retirement system shall invest not more than 70 percent of its assets in equities; and on and after July 1, 2011, a large retirement system shall invest not more than 75 percent of its assets in

equities; provided, further, that no fund shall increase its assets in equities through purchase by more than 20 percent in any fiscal year”; deleted former subsection (d), which read: “In the event the value of a fund’s assets decreases so as to render such fund ineligible to invest in foreign equities as provided in subsection (b) of this Code section and to invest in excess of 55 percent of its assets in total equities as provided in subsection (c) of this Code section, such fund shall have 12 months from the date of such event to come into compliance with the investment authority provided by this article; provided, however, that during such period such fund shall not increase its holdings in foreign equities and shall not increase its total holdings in equities.”; and redesignated former subsections (e) and (f) as present subsections (d) and (e), respectively.

47-20-85. Compliance.

Notwithstanding any provision of the federal Secondary Mortgage Market Enhancement Act, 15 U.S.C. Section 77r-1, to the contrary, any fund subject to the provisions of this article shall comply with all provisions, restrictions, and limitations concerning investments provided in this article. (Code 1981, § 47-20-85, enacted by Ga. L. 2000, p. 2, § 2.)

47-20-86. Enforcement.

This article shall be enforced as provided in Article 3 of this chapter. (Code 1981, § 47-20-86, enacted by Ga. L. 2000, p. 2, § 2.)

CHAPTER 21

REGENTS RETIREMENT PLAN

Article 1

General Provisions

Sec.

- 47-21-1. Short title.
- 47-21-2. Definitions.
- 47-21-3. Establishment and administration of optional retirement plan; designation of companies from which contracts will be purchased.
- 47-21-4. Employee and other contributions.
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Sec.

- 47-21-6. Payment of retirement, death, or other benefit.
- 47-21-7. Treatment of annuity contracts under Code Section 33-38-2.
- 47-21-8. Actuarial study by state auditor.

Article 2

Regents Retirement Health Benefit Fund

- 47-21-20. Definitions.
- 47-21-21. Creation of fund; purpose.
- 47-21-22. Operation of the fund; responsibilities.
- 47-21-23. Actuarial services.
- 47-21-24. Administration of fund.
- 47-21-25. Annual duties.

ARTICLE 1

GENERAL PROVISIONS

Editor’s notes. — Ga. L. 2007, p. 68, § 3, effective July 1, 2007, designated the existing provisions of this chapter as Article 1 and enacted Article 2 thereof.

47-21-1. Short title.

This chapter shall be known and may be cited as the “Regents Retirement Plan Act.” (Code 1981, § 47-21-1, enacted by Ga. L. 1990, p. 1811, § 2.)

47-21-2. Definitions.

As used in this chapter, the term:

- (1) “Board of regents” means the Board of Regents of the University System of Georgia.
- (2) “Board of trustees” means the Board of Trustees of the Teachers Retirement System of Georgia.
- (3) “Earnable compensation” means the full rate of regular compensation payable to a participating employee for the employee’s normal working time and includes compensation paid to the employee by an employer from grants or contracts made by outside agencies with the employer.
- (4) “Participating employee” means an eligible university system employee, as defined in Code Section 47-3-68, who elects to participate in the retirement plan provided for in this chapter pursuant to the

provisions of said Code Section 47-3-68. (Code 1981, § 47-21-2, enacted by Ga. L. 1990, p. 1811, § 2.)

47-21-3. Establishment and administration of optional retirement plan; designation of companies from which contracts will be purchased.

(a) The board of regents is authorized to establish an optional retirement plan under which it may purchase annuity contracts, either fixed or variable or a combination thereof, or shares in one or more mutual funds providing retirement and death benefits which shall become the property of participating employees of the University System of Georgia.

(b) The board of regents shall provide for the administration and maintenance of the optional retirement plan authorized by this chapter.

(c) The board of regents shall designate at least two but no more than five companies from which contracts will be purchased. In making this designation, the board of regents shall consider the following:

(1) The nature and extent of the rights and benefits to be provided by the contracts for participating employees and their beneficiaries;

(2) The relation of the rights and benefits to the amount of the contributions to be made pursuant to the provisions of this chapter;

(3) The suitability of the rights and benefits to the needs and interests of participating employees and the University System of Georgia;

(4) The ability of the designated companies to provide the rights and benefits under such contracts; and

(5) The efficacy of the contracts in the recruitment and retention of faculty and principal administrators. (Code 1981, § 47-21-3, enacted by Ga. L. 1990, p. 1811, § 2; Ga. L. 1995, p. 334, § 2.)

47-21-4. Employee and other contributions.

(a) Each participating employee shall contribute to the optional retirement plan a percentage of his or her earnable compensation as determined by the board of trustees which shall be not less than 5 nor more than 6 percent.

(b) The University System of Georgia shall contribute to the optional retirement plan on behalf of each participating employee the following:

(1) Prior to January 1, 1997, an amount equal to 4 percent of the participating employee's earnable compensation;

(2) On and after January 1, 1997, and before January 1, 2009, an amount equal to the normal cost contribution determined by the board of trustees in accordance with the provisions of Code Section 47-3-48; and

(3) On and after January 1, 2009, an amount determined by the board of regents after consulting with the state auditor, the director of the Office of Planning and Budget, and the state accounting officer. The board of regents shall review the contribution amount every three years.

(c) The participating employee's contribution required by the provisions of subsection (a) of this Code section may be made by a reduction in earnable compensation or by an employer pickup pursuant to the authority of any applicable provisions of the United States Internal Revenue Code, as amended. The method of contribution provided for in this subsection shall be a privilege for the convenience of employees and no right of action shall accrue to the employee or any company designated to provide such optional retirement plan for errors, omissions, or decisions of any agent of the University System of Georgia regarding deductions under this subsection.

(d) All contributions authorized or required by this Code section shall be paid to the designated companies for the benefit of each participating employee by the financial officer of the employing institution. (Code 1981, § 47-21-4, enacted by Ga. L. 1990, p. 1811, § 2; Ga. L. 1994, p. 660, § 1; Ga. L. 1996, p. 1244, § 1; Ga. L. 1998, p. 126, § 1; Ga. L. 2008, p. 347, § 2/HB 815.)

The 2008 amendment, effective July 1, 2008, in paragraph (b)(1), deleted "and" at the end; in paragraph (b)(2), inserted "and before January 1, 2009," in the first sentence and substituted "; and" for "The provisions

of this subsection are subject to subsequent legislation; provided, however, that such legislation shall not provide for a rate of contribution lower than 4 percent." at the end; and added paragraph (b)(3).

47-21-5. Remittances by the University System of Georgia.

(a) In addition to the contributions specified in Code Section 47-21-4, the University System of Georgia shall remit to the Teachers Retirement System of Georgia the following payments:

(1) An amount equal to the accrued liability contribution determined by the board of trustees in accordance with the provisions of Code Section 47-3-48 that would have been made on behalf of participating employees if they had been members of the Teachers Retirement System of Georgia; and

(2) An amount, if any, equal to the increase in the normal contribution rate determined by the board of trustees in accordance with the provisions of paragraph (2) of Code Section 47-3-43 which results directly from participating employees ceasing to be or failing to become members of the Teachers Retirement System of Georgia.

(b) The remittances provided for in subsection (a) of this Code section shall be made at the same time and in the same manner as those made on

behalf of members of the Teachers Retirement System of Georgia. (Code 1981, § 47-21-5, enacted by Ga. L. 1990, p. 1811, § 2.)

47-21-6. Payment of retirement, death, or other benefit.

No retirement, death, or other benefit shall be paid by the Teachers Retirement System of Georgia to or on behalf of a participating employee in the optional retirement plan based upon any service rendered by such employee while a member of the optional retirement plan or while covered by such plan. Benefits are payable to participating employees or their beneficiaries by the designated companies in accordance with the terms of the annuity contracts. (Code 1981, § 47-21-6, enacted by Ga. L. 1990, p. 1811, § 2; Ga. L. 1998, p. 173, § 1.)

47-21-7. Treatment of annuity contracts under Code Section 33-38-2.

Annuity contracts issued under the optional retirement plan provided for in this chapter shall be treated under Code Section 33-38-2 in the same manner as contracts qualified under Section 403(b) of the United States Internal Revenue Code. (Code 1981, § 47-21-7, enacted by Ga. L. 1990, p. 1811, § 2.)

47-21-8. Actuarial study by state auditor.

By not later than January 1, 2000, the state auditor shall have an actuarial study completed to determine what effect the optional retirement plan provided for in this chapter has had on the Teachers Retirement System of Georgia. The results of such study shall be reported to the General Assembly at the 2000 regular session. (Code 1981, § 47-21-8, enacted by Ga. L. 1990, p. 1811, § 2; Ga. L. 1996, p. 1244, § 2.)

ARTICLE 2

REGENTS RETIREMENT HEALTH BENEFIT FUND

47-21-20. Definitions.

As used in this article, the term:

(1) “Actuarial assumptions” means assumptions regarding the occurrence of future events affecting costs of the fund such as mortality, withdrawal, disability, and retirement; changes in compensation and offered post-employment benefits; rates of investment earnings and asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other relevant items.

(2) “Actuarially sound” means that calculated contributions to the fund are sufficient to pay the full actuarial cost of the fund. The full

actuarial cost includes both the normal cost of providing for fund obligations as they accrue in the future and the cost of amortizing the unfunded actuarial accrued liability over a period of no more than 30 years.

(3) "Administrative expenses" means all expenses incurred in the operation of the fund, including all investment expenses.

(4) "Annual required contribution" means the amount determined in accordance with requirements of Governmental Accounting Standards Board Statement No. 43, or any subsequent Governmental Accounting Standards Board statements that may be applicable to the fund.

(5) "Board" means the Board of Regents of the University System of Georgia.

(6) "Covered health care expenses" means all actual health care expenses incurred by the health plan with respect to fund beneficiaries. Actual health care expenses include claims incurred with respect to fund beneficiaries and premiums incurred with respect to intermediary entities and health care providers by the health plan.

(7) "Employer" means the Board of Regents of the University System of Georgia and any department or institution of thereof that employs persons who are eligible to participate in the health plan.

(8) "Fund" means the Board of Regents Retiree Health Benefit Fund established under this article.

(9) "Health plan" means the board's health insurance plans established pursuant to authority granted to the board pursuant to Code Sections 20-3-31 and 20-3-51.

(10) "Obligations" means the administrative expenses of the fund and the cost of covered health care expenses incurred on behalf of fund beneficiaries less any amounts received by or on behalf of fund beneficiaries. (Code 1981, § 47-21-20, enacted by Ga. L. 2007, p. 68, § 3/SB 156.)

47-21-21. Creation of fund; purpose.

(a) There is created the Board of Regents Retiree Health Benefit Fund to provide for the employer costs of retiree post-employment health insurance benefits. The fund shall be a trust fund of public funds. The board in its official capacity shall be its trustee and the Chancellor in his or her official capacity shall be its administrator.

(b) The fund shall be available and dedicated without fiscal year limitations for covered health care expenses and administration costs. All employer and retiree contributions, appropriations, earnings, and reserves

for the payment of obligations under this article shall be irrevocably credited to such fund. The amounts remaining in such fund, if any, after such health care expenses and administration costs have been paid shall be retained in such fund as a special reserve for covered health care expenses and administration costs. The board shall determine the time and amounts of distributions from the special reserve for covered health care expenses and administration costs. All assets of the fund shall be used solely for the payment of fund obligations and for no other purpose and shall be protected from creditors of the state and the board. (Code 1981, § 47-21-21, enacted by Ga. L. 2007, p. 68, § 3/SB 156.)

47-21-22. Operation of the fund; responsibilities.

(a) Responsibility for the proper operation of the fund is vested in the board.

(b) The board shall:

(1) Adopt actuarial assumptions as necessary and prudent;

(2) Employ such personnel as may be needed to carry out the provisions of this article and such personnel shall be employees of the board. The pro rata share of the costs of operating the board in the manner prescribed by law shall be a part of the administrative costs of the fund;

(3) Maintain all necessary records regarding the fund in accordance with generally accepted accounting principles, as applied to the fund;

(4) Collect all moneys due to the fund and shall pay any administrative expenses necessary and appropriate for the operation of the fund from the fund; and

(5) Cause to be prepared an annual report of fund activities. Such report shall include, but not be limited to, audited financial statements.

(c) The board may:

(1) Adopt any rules and regulations that it finds necessary to properly administer the fund;

(2) Employ or contract for the services of actuaries and other professionals as required to carry out the duties established by this article; and

(3) Contract with the Division of Investment Services of the Teachers Retirement System of Georgia or such other investment advisers as deemed appropriate and prudent by the board for any necessary services with respect to fund investments.

(d) Notwithstanding any other provision of law to the contrary, the board shall be entitled to any information that it deems necessary and

appropriate from a university employee retirement system in order that the provisions of this article may be carried out. (Code 1981, § 47-21-22, enacted by Ga. L. 2007, p. 68, § 3/SB 156; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “advisers” for “advisors” near the middle of paragraph (c)(3).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-21-23. Actuarial services.

(a) The actuary employed or retained by the board shall provide technical advice to the board regarding the operation of the fund.

(b) Utilizing the actuarial assumptions most recently adopted by the board, the actuary shall set the annual actuarial present values for the state plan for other post-employment benefits. (Code 1981, § 47-21-23, enacted by Ga. L. 2007, p. 68, § 3/SB 156.)

47-21-24. Administration of fund.

(a) The board shall have control over the fund established by this article. The provisions provided for in this article and all administrative expenses shall be paid from the fund. The board may expend moneys from the fund for any purpose authorized by this article.

(b) The board shall have full power to invest and reinvest its assets, subject to all of the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of Title 47, the “Public Retirement Systems Investment Authority Law.” Subject to such terms, conditions, limitations, and restrictions, the board shall have full power to hold, purchase, sell, assign, transfer, and dispose of any securities and investments in which any of the moneys are invested, including the proceeds of any investments and other moneys belonging to the fund.

(c) Except as otherwise provided in this chapter, no member or employee of the board shall have any personal interest in the gains or profits from any investment made by the board or use the assets of the fund in any manner, directly or indirectly, except to make such payments as may be authorized by the board in accordance with this article. (Code 1981, § 47-21-24, enacted by Ga. L. 2007, p. 68, § 3/SB 156.)

47-21-25. Annual duties.

(a) The board shall annually determine the minimum annual required contributions sufficient to maintain the fund in an actuarially sound manner in accordance with Governmental Accounting Standards Board Statement No. 43, or any subsequent Governmental Accounting Standards Board statements that may be applicable to the fund.

(b) The board may annually establish employer contribution rates for the purpose of establishing the health plan from fiscal year to fiscal year and additional employer contribution rates in accordance with the health plan for other post-employments benefits.

(c) It shall be the responsibility of employers to make contributions to the fund in accordance with the employer contribution rates established by the board. (Code 1981, § 47-21-25, enacted by Ga. L. 2007, p. 68, § 3/SB 156.)

CHAPTER 22

GEORGIA DEFINED CONTRIBUTION PLAN

Sec.		Sec.	
47-22-1.	Definitions.	47-22-8.	Member contributions; earnings.
47-22-2.	Creation of Georgia Defined Contribution Plan.	47-22-9.	Payment of lump sum on termination of employment; continued accrual of earnings absent request for lump sum payment; withdrawal of moneys and closing of account upon cessation of employment; vesting and nonforfeitability.
47-22-3.	Executive secretary.		
47-22-4.	Administration and operation of plan; records; payment of employees and expenses; investment.	47-22-10.	Lump sum payment on death of member.
47-22-5.	Trustee of funds of plan; power to invest funds; conflicts of interest as to investments; custody of funds; vouchers.	47-22-11.	Retirement; option to receive periodic payment.
47-22-6.	Legal adviser.		
47-22-7.	Membership in plan.		

47-22-1. Definitions.

As used in this chapter, the term:

(1) “Accumulated contributions” means the sum of all amounts deducted from the compensation of a member’s salary and credited to such member’s individual account in this plan, together with earnings thereon as provided in this chapter.

(2) “Board” means the Board of Trustees of the Employees’ Retirement System of Georgia.

(3) “Defined contribution plan” means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant’s account; any income, expenses, gains, and losses; and any forfeiture of accounts of other participants which may be allocated to such participant’s account, which plan is intended to be qualified under Section 401(a) of the Internal Revenue Code, 42 U.S.C. Section 401(a).

(4) “Employee” means any employee of an employer who is not a member of any public retirement or pension system created pursuant to this title; provided, however, the following persons shall not be considered employees under this paragraph:

(A) A person performing services for an institution in which such person is duly enrolled as a full-time student;

(B) A person performing services for an employer pursuant to a contract as a bona fide independent contractor; or

(C) Members of any state board or commission.

(5) “Employer” means the state or any department, bureau, institution, board, or commission of the state, the State Board of Education, and the Board of Regents of the University System of Georgia.

(6) “Member” means any employee included in the membership of the plan.

(7) “Plan” means the Georgia Defined Contribution Plan created by this chapter.

(8) “Plan year” means the 12 month period beginning July 1 of each year. (Code 1981, § 47-22-1, enacted by Ga. L. 1992, p. 1288, § 1; Ga. L. 2000, p. 1302, § 1; Ga. L. 2009, p. 947, § 29/HB 202.)

The 2009 amendment, effective May 11, 2009, added paragraph (8).

47-22-2. Creation of Georgia Defined Contribution Plan.

There is created and placed under the administration of the Board of Trustees of the Employees’ Retirement System of Georgia the Georgia Defined Contribution Plan. (Code 1981, § 47-22-2, enacted by Ga. L. 1992, p. 1288, § 1.)

47-22-3. Executive secretary.

There is created an office known as the executive secretary of the Georgia Defined Contribution Plan, and the director of the Employees’ Retirement System of Georgia shall serve as the executive secretary of the plan. (Code 1981, § 47-22-3, enacted by Ga. L. 1992, p. 1288, § 1.)

47-22-4. Administration and operation of plan; records; payment of employees and expenses; investment.

(a) The general administration and responsibility for the proper operation of the plan and for putting this chapter into effect are vested in the board.

(b) The board shall keep a record of all of its proceedings under this chapter, which record shall be open to the public.

(c) All persons employed by the board and the expenses of the board in furtherance of this chapter shall be paid from funds appropriated to the plan until such time as the board determines that the return on investments is sufficient to cover such costs.

(d) The board may combine the moneys subject to this chapter with other moneys under the control of the board for purposes of investment, provided that a separate accounting is maintained for all moneys subject to

this chapter. (Code 1981, § 47-22-4, enacted by Ga. L. 1992, p. 1288, § 1; Ga. L. 2005, p. 535, § 28/HB 460; Ga. L. 2010, p. 1207, § 59/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted former subsections (b) through (d), which read: “(b) The board shall engage such actuarial and other services as shall be required to transact the business of the plan.

“(c) The board shall designate an actuary who shall be the technical adviser of the board on matters regarding the operation of the plan and shall perform such other duties as are required in connection therewith.

“(d) Subject to the limitations of this chapter, the board shall, from time to time, adopt the plan document and establish rules and regulations for the administration of the plan and for the transaction of business.”; and redesignated former subsections (e) through (g) as present subsections (b) through (d), respectively.

Editor’s notes. — Ga. L. 2010, p. 1207,

§ 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-22-5. Trustee of funds of plan; power to invest funds; conflicts of interest as to investments; custody of funds; vouchers.

(a) The board shall be the trustee of the funds of the plan; may invest and reinvest such funds; and may hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created under this chapter shall have been invested, as well as the proceeds of such investments and any moneys belonging to such fund, all in such manner as funds of the Employees’ Retirement System of Georgia are invested and reinvested.

(b) Except as otherwise provided for in this chapter, no member or person employed by the board shall have a direct interest in the gains or profits of any investment made by the board. No member or employee of the board shall, directly or indirectly, for himself or as an agent, in any manner use the funds of the plan except to make such current and necessary payments as are authorized by the board; nor shall any member or employee of the board become an endorser, surety, or in any manner an obligor for moneys loaned or borrowed from the board.

(c) The board shall be the custodian of the funds of the plan. All payments from such funds shall be made by the board only upon vouchers signed by two persons designated by the board. (Code 1981, § 47-22-5, enacted by Ga. L. 1992, p. 1288, § 1.)

47-22-6. Legal adviser.

The Attorney General shall be the legal adviser of the board. (Code 1981, § 47-22-6, enacted by Ga. L. 1992, p. 1288, § 1; Ga. L. 2010, p. 1207, § 65/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “adviser” for “advisor” near the end.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-22-7. Membership in plan.

Any person who is an employee on July 1, 1992, shall become a member of the plan on such date. Any person who becomes an employee after July 1, 1992, shall become a member on the date such person becomes an employee. (Code 1981, § 47-22-7, enacted by Ga. L. 1992, p. 1288, § 1.)

47-22-8. Member contributions; earnings.

Each member shall contribute 7 1/2 percent of such member’s gross salary. Such contributions shall be made through payroll deductions. Such amount so deducted shall be credited to the individual account of the member. Earnings shall be credited to each member’s account pursuant to rules and regulations adopted by the board as prescribed by the plan document. (Code 1981, § 47-22-8, enacted by Ga. L. 1992, p. 1288, § 1.)

47-22-9. Payment of lump sum on termination of employment; continued accrual of earnings absent request for lump sum payment; withdrawal of moneys and closing of account upon cessation of employment; vesting and nonforfeitability.

(a) Upon the written request of a member who ceases to be an employee, a lump sum amount shall be paid to such person equal to the total amount credited to such member’s account at the time the member ceases to be an employee. If no such request is made, the member’s account shall continue to accrue earnings in the same manner as any member’s account.

(b) Notwithstanding the provisions of subsection (a) of this Code section, if any member who ceases to be an employee has less than such minimum amount as determined by the board, but not more than

\$5,000.00, credited to such member's account, the board may, at its option, require such member to withdraw all such moneys and the member's account shall be closed; provided, however, that the board's option to require withdrawal of small account balances shall be applied in a consistent manner; provided, further, that if the board provides for mandatory distributions of account balances greater than \$1,000.00 and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly, the plan shall pay the distribution in a direct rollover to an individual retirement plan designated by the board in accordance with Section 401(a)(31)(B) of the federal Internal Revenue Code.

(c) Except as otherwise provided in Article 2 of Chapter 1 of this title, a member's account balance in the plan shall at all times be 100 percent vested and nonforfeitable. (Code 1981, § 47-22-9, enacted by Ga. L. 1992, p. 1288, § 1; Ga. L. 2006, p. 1010, § 3/HB 1020; Ga. L. 2009, p. 947, § 30/HB 202; Ga. L. 2010, p. 1207, § 60/SB 436.)

The 2009 amendment, effective May 11, 2009, rewrote this Code section.

The 2010 amendment, effective July 1, 2010, deleted the former second sentence of subsection (a) which read: "If such member dies before payment has been made, such payment shall be made to such person as the member has nominated, by written designation filed with the board; otherwise to the member's estate."

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in

Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-22-10. Lump sum payment on death of member.

Upon the death of any member, a lump sum amount shall be paid to such person as the member has nominated by written designation, filed with the board; otherwise to the member's estate. Such lump sum amount shall be equal to the total amount credited to the member's account on the date of the member's death. (Code 1981, § 47-22-10, enacted by Ga. L. 1992, p. 1288, § 1.)

47-22-11. Retirement; option to receive periodic payment.

Any member shall be entitled to retire upon attaining the age of 65. Such member shall have the option to receive a periodic payment as permitted by the board. (Code 1981, § 47-22-11, enacted by Ga. L. 1992, p. 1288, § 1; Ga. L. 2005, p. 535, § 29/HB 460.)

CHAPTER 23

GEORGIA JUDICIAL RETIREMENT SYSTEM

Article 1		Sec.	
General Provisions		47-23-48.	Election of retirement system; effect of subsequent legislation.
Sec.		47-23-49.	Irrevocable election by individuals employed but previously ineligible; creditable service [Repealed].
47-23-1.	Definitions.		
Article 2			
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47-23-20.	Administration; membership of the board; term; compensation; quorum.		
47-23-21.	Authority of board.		
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47-23-44.	Members receiving benefits from predecessor retirement systems; creditable service with other systems.	47-23-82.	Contributions by juvenile court judges; employer contributions; reports required.
47-23-45.	Effect of change in employment.	47-23-83.	Termination of membership prior to vesting.
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		Article 4	
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		Salary, Retirement, Death, and Disability Benefits	
		47-23-100.	Salary defined.

Sec.

- 47-23-101. Calculation of benefits based on salary after July 1, 1998.
- 47-23-102. Vesting; benefits upon retirement.
- 47-23-103. Retirement based on age; application to retire.
- 47-23-104. Disability; determination of benefits; determining disability.
- 47-23-105. Spouses' benefits; ceasing spouses' benefits; vesting; designation of survivors benefits.
- 47-23-106. County supplement of salaries.
- 47-23-107. Appointing beneficiary.
- 47-23-108. Withdrawal of funds.
- 47-23-109. Cessation of retirement allowance for resuming state service.
- 47-23-110. Service as a senior judge.

Sec.

- 47-23-121. Exemption from levy and sale, garnishment or attachment.
- 47-23-122. Falsification of records; correction of errors; participation in Employees' Retirement System or Superior Court Judges Retirement Fund.
- 47-23-123. Participation in Superior Court Judges Retirement Fund, District Attorneys Emeritus, and District Attorneys Retirement Fund.
- 47-23-124. Legislative intent.

Article 7

Miscellaneous Provisions

- 47-23-120. No abridgement of rights un-

Cross references. — Reimbursement of Department of Law by Employees' Retirement System of Georgia, Teachers Retirement

System of Georgia, for legal services, § 45-15-37.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under Ga. L. 1976, p. 586 are included in the annotations for this chapter.

Superior court judges eligible for one of three retirement systems: (1) Superior Court Judges Retirement Fund of Georgia (Ch. 8 of this title, § 47-8-1 et seq.), (2) Trial Judges and Solicitors Retirement Fund (former Ch. 10 of this title), and (3) Superior Court Judges Retirement System (former Ch. 9 of this title) depending mainly on the date of assuming office. 1976 Op. Att'y Gen. No. 76-86 (decided under Ga. L. 1976, p. 586).

Membership in Superior Court Judges Retirement System. — Superior court judge who took office as such after June 30, 1968, and who did not become a member of the Trial Judges and Solicitors Retirement Fund, is authorized and required to become a member of the Superior Court Judges Retirement System under Ga. L. 1976, p. 586, § 8. 1976 Op. Att'y Gen. No. U76-49 (decided under Ga. L. 1976, p. 586).

Simultaneous membership in two systems.

— One who is both a state court judge and a juvenile court judge may simultaneously belong to the Employees' Retirement System (Ch. 2 of this title, O.C.G.A. § 47-2-1 et seq.), if otherwise eligible, and the Trial Judges, and Solicitors Retirement Fund. 1981 Op. Att'y Gen. No. 81-6 (decided under Ga. L. 1976, p. 586).

Applicability of Ga. L. 1976, p. 586 to non-member of fund under this chapter. — A judge who has never been a member of either the Trial Judges and Solicitors Retirement Fund or the Superior Court Judges Retirement Fund of Georgia (see O.C.G.A. § 47-8-1 et seq.), and has not performed any service under nor made contributions pursuant to either of these provisions, cannot be vested with any rights, benefits, or elections granted and contained in those provisions, and, accordingly, Ga. L. 1976, p. 586, § 39 had no application to such judge..

Applicability of amendments. — If a former member makes no contributions to

the fund and performs no services as a member after amendments become effective, they do not apply to him. 1980 Op. Att’y

Gen. No. 80-155 (decided under Ga. L. 1976, p. 586).

RESEARCH REFERENCES

ALR. — Gift to or for employees’ pension fund as valid charitable gift or trust, 28 ALR2d 428.

Vested right of pensioner to pension, 52 ALR2d 437.

Relationship between performance of official duties and subsequent disability or

death, for purpose of pension or survivorship benefits of government employee other than fireman, policeman, or military personnel, 85 ALR2d 1048.

Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.

ARTICLE 1

GENERAL PROVISIONS

47-23-1. Definitions.

As used in this chapter, the term:

(1) “Accumulated contributions” means the sum of all amounts deducted from the earnable compensation of a member or paid by the member to establish or reestablish credit for service, which amounts are credited to his or her individual account together with regular interest thereon. Such term shall also include the amount of employee contributions paid by the employer on behalf of members, together with regular interest thereon, excluding employee contributions paid by the employer or the employee for group term life insurance coverage.

(2) “Average earnable monthly compensation” means the average earnable monthly compensation of a member during the 24 consecutive months of creditable service producing the highest such average.

(3) “Beneficiary” means any person other than a retired member of a retirement system who is receiving a benefit from that retirement system.

(4) “Board” means the Board of Trustees of the Georgia Judicial Retirement System.

(5) “County pension or retirement fund” means only those certain pension and retirement funds provided for by local Acts applicable to certain named counties.

(6) “Covered position” means an employment position eligible for membership under this chapter.

(7) “Creditable service” means prior service and membership service for which credit is allowable under this chapter, but in no case shall more than one year of service be creditable for all service in one calendar year,

nor shall it include any service which has been or may be credited to a member by any other public retirement system of this state.

(8) "District attorney" means any district attorney holding office on July 1, 1998, and any district attorney taking office on or after July 1, 1998, except that the term district attorney shall not include any district attorney:

(A) Who was serving as a district attorney on June 30, 1998, and who was not a member of the District Attorneys' Retirement System; or

(B) Who is a member of any other publicly supported retirement or pension system or fund created by any law of this state, if the retirement or pension benefits under such other publicly supported retirement or pension system or fund are based wholly or partially on the compensation payable to the district attorney from state funds.

(9) "District Attorneys' Retirement System" means that retirement system created by Chapter 13 of this title as such chapter existed prior to July 1, 1998.

(10) "Earnable monthly compensation" means the full rate of regular monthly compensation payable to a member employee for his or her full working time, excluding any local supplements.

(11) "Fund" means the Georgia Judicial Retirement System Fund provided for by Code Section 47-23-22. The fund shall include, but is not limited to, a pension accumulation fund in which the benefits described in Article 6 of this chapter will be held and an employee contribution accumulation fund in which the contributions described in Article 5 of this chapter will be held.

(12) "Judge, solicitor, or solicitor-general of a state court" means a person elected or appointed to such office for a specific term. Such term shall not include any person acting as a judge or solicitor of a state court on a temporary basis or serving as judge or solicitor-general pro tempore of a state court.

(13) "Juvenile court judge" means a juvenile court judge now or hereafter appointed or otherwise holding office pursuant to Code Section 15-11-18 relative to the creation of juvenile courts, except judges of the superior courts sitting as juvenile court judges and juvenile court judges who are members of local retirement or pension systems created by local law.

(14) "Predecessor retirement system" means the District Attorneys' Retirement System, the Superior Court Judges Retirement System, and the Trial Judges and Solicitors Retirement Fund, collectively or individually.

(15) “Regular interest” means interest at such rate as shall be determined by the board of trustees, which interest shall be compounded annually.

(16) “Retirement system” means the Georgia Judicial Retirement System.

(17) “State court” means any court created pursuant to the provisions of Chapter 7 of Title 15 or any court continued as a state court by Article VI, Section X of the Constitution of the State of Georgia; provided, however, that such term shall include the State Court of Fulton County subject to the provisions of Code Section 47-23-50.

(18) “Superior Court Judges Retirement System” means that retirement system created by Chapter 9 of this title as such chapter existed prior to July 1, 1998.

(19) “Trial Judges and Solicitors Retirement Fund” means that retirement fund created by Chapter 10 of this title as such chapter existed prior to July 1, 1998. (Code 1981, § 47-23-1, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2000, p. 20, § 25; Ga. L. 2004, p. 573, § 1; Ga. L. 2005, p. 535, § 30/HB 460; Ga. L. 2009, p. 947, § 31/HB 202.)

The 2009 amendment, effective May 11, 2009, added paragraph (1); and redesignated former paragraphs (1) through (18) as present paragraphs (2) through (19), respectively.

JUDICIAL DECISIONS

Reimbursed expenses not part of salary. — Under O.C.G.A. §§ 47-23-1, 47-23-81, and 47-23-100, “salary” is defined as the full rate of regular compensation for full working time. The Georgia Judicial Retirement System, in calculating a former solicitor general’s benefits, was authorized to exclude from

this definition sums the county paid to the solicitor general as reimbursement for office expenses that the county would otherwise have incurred—amounts that were not reported as income to the IRS. *McKelvey v. Ga. Judicial Ret. Sys.*, 297 Ga. App. 650, 678 S.E.2d 120 (2009).

ARTICLE 2

ADMINISTRATION AND MANAGEMENT

47-23-20. Administration; membership of the board; term; compensation; quorum.

(a) There is created the Georgia Judicial Retirement System which shall be administered by the Board of Trustees of the Georgia Judicial Retirement System provided for by this Code section.

(b) The board shall be composed of all members of the Board of Trustees of the Employees’ Retirement System of Georgia and three additional members appointed by the Governor, each of whom shall be either:

- (1) A superior court judge;
- (2) A state court judge;
- (3) A district attorney;
- (4) A state court solicitor-general; or
- (5) A juvenile court judge.

(c) The first members appointed by the Governor pursuant to subsection (b) of this Code section shall be appointed to take office on July 1, 1998. The Governor shall designate two of the initial appointees to serve initial terms of two years and one of the initial appointees to serve a term of four years. Thereafter, the Governor shall appoint successors to take office upon the expiration of the respective terms of office for terms of four years and until their successors are appointed and qualified. Such members of the board shall be eligible for successive appointment as members and shall serve until their successors are appointed and qualified. Any vacancy for any reason in the membership of the board appointed by the Governor shall be filled by appointment of the Governor for the unexpired term.

(d) The trustees may receive the daily expense allowance authorized for members of the General Assembly for each day spent attending meetings of the board of trustees and any committee meetings called pursuant to authorization of the board of trustees and for time spent in necessary travel. In addition to such amount, the trustees shall be reimbursed for all actual travel and other expenses necessarily incurred through service on the board of trustees. State officials serving ex officio shall not receive the daily expense allowance but shall be entitled to reimbursement of actual expenses.

(e) Six members at any meeting of the board shall constitute a quorum to transact business, but the affirmative vote of five members shall be necessary for a decision by the board.

(f) The officers and director of the board shall be the same as the officers and director of the Board of Trustees of the Employees' Retirement System of Georgia. (Code 1981, § 47-23-20, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-21. Authority of board.

- (a) The board is given the following authority, powers, and duties:
- (1) To contract with proper federal authorities for old-age, survivors, and disability insurance coverage under the Social Security Act;
 - (2) To provide for the collection of all moneys provided for in this chapter;

- (3) To provide for the payment of all administrative expenses;
- (4) To hear and decide all applications for retirement and disability benefits provided for under this chapter;
- (5) To adopt such tables as it shall deem desirable in connection with the proper operation of the retirement system;
- (6) To provide for the payment of all retirement and disability benefits that may be determined to be due under the rules and regulations as adopted by the board;
- (7) To make and promulgate all necessary rules and regulations, not inconsistent with the laws of this state, to carry out this chapter and to distribute such rules and regulations to members of this retirement system;
- (8) To determine eligibility of persons to receive retirement benefits and disability benefits under this chapter;
- (9) To make provisions for refunds and repayments to persons who may be entitled to receive them; and
- (10) To keep records of all of its meetings.

(b)(1) Subject to the terms and limitations of this subsection, the board of trustees is authorized to adopt from time to time a method or methods of providing for increases in the maximum monthly retirement benefit payable under Article 7 of this chapter for persons theretofore or thereafter retiring under this chapter. Such method shall be based upon:

- (A) The recommendation of the actuary of the board of trustees;
- (B) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and
- (C) Such other factors as the board deems relevant. Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board of trustees shall determine.

(2) No increase granted pursuant to paragraph (1) of this subsection shall exceed 3 percent of the maximum monthly retirement benefit then in effect. Thereafter, such increases may be authorized effective as of January 1 and July 1 of each year; provided, however, that no such increase shall exceed 1 1/2 percent of the maximum monthly retirement benefit then in effect.

(3) No increase shall be made pursuant to paragraph (1) of this subsection to become effective within six months of the effective date of any increase in the maximum retirement benefit granted by the General Assembly through amendment of Article 7 of this chapter.

(c) The board shall also have all other powers necessary for the proper administration of this chapter.

(d) Subject to the terms and limitations of this subsection, the board of trustees is authorized to adopt from time to time a method or methods of establishing an employee contribution rate lower than as established in Article 5 of this chapter; provided, however, that such rate shall not be lower than 6 1/2 percent. Such method shall be based upon:

(1) The recommendation of the actuary of the board of trustees;

(2) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(3) Such other factors as the board deems relevant.

(e) Notwithstanding the provisions of subsection (d) of this Code section, no member who becomes a member of this retirement system on or after July 1, 2009, shall be entitled to receive any postretirement benefit adjustment. (Code 1981, § 47-23-21, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2002, p. 1071, § 1; Ga. L. 2009, p. 320, § 4/HB 452.)

The 2009 amendment, effective July 1, 2009, added subsection (e).

Editor's notes. — Ga. L. 2009, p. 320, § 1, not codified by the General Assembly, provides that: "The General Assembly is desirous of providing an established annual cost-of-living adjustment to all current active and retired members of the Employees' Re-

tirement System of Georgia, the Georgia Legislative Retirement System, and the Georgia Judicial Retirement System. In order to do so, limiting future liability of the systems by adjusting the retirement expectations of persons who are newly employed is a regrettable but necessary step toward fiscal soundness."

47-23-22. Control of funds; investments.

(a) The board shall be the trustees of the funds and shall have control of the funds provided for in this chapter and all funds received by the board shall be deposited into the Georgia Judicial Retirement System Fund. The benefits provided for in this chapter and all administrative expenses shall be paid from such fund. The board shall have authority to expend the funds in accordance with this chapter.

(b) The board shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the "Public Retirement Systems Investment Authority Law." Subject to such terms, conditions, limitations, and restrictions, the board shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds are invested, including the proceeds of any investments and any money belonging to the fund.

(c) The board is authorized to employ agents, including, but not limited to, banks or trust departments thereof, and to contract with such agents for

their services as advisers and counselors, who will make recommendations for investments and make investments if the board so authorizes. (Code 1981, § 47-23-22, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2000, p. 2, § 13; Ga. L. 2005, p. 535, § 31/HB 460.)

47-23-23. Gifts.

The board may take, by gift, grant, or bequest, any money, real or personal property, or any other thing of value and may hold or invest the same for the uses and purposes of the retirement system in accordance with this chapter. (Code 1981, § 47-23-23, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-24. Records; audited annual financial statement.

The board shall keep permanent records of all its accounts in granting retirement and disability benefits and shall keep proper records and books concerning its operation. Each year the board shall publish an audited annual financial statement of the retirement system. (Code 1981, § 47-23-24, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-25. Payment of administrative expenses.

In order to pay the administrative expenses of the fund and upon the receipt of a request from the board on or after July 1, 1998, and each year thereafter, The Council of Superior Court Judges of Georgia, The Council of State Court Judges of Georgia, the Council of Juvenile Court Judges, and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to pay into the fund, from funds appropriated or otherwise available, an amount sufficient to pay the administrative expenses of the fund as certified by the board to The Council of Superior Court Judges of Georgia, The Council of State Court Judges of Georgia, the Council of Juvenile Court Judges, and the Prosecuting Attorneys' Council of the State of Georgia. (Code 1981, § 47-23-25, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2009, p. 753, § 15/SB 109; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2010, substituted the present provisions of this Code section for the former provisions, which read: "In order to pay the administrative expenses of the fund and upon the receipt of a request from the board on or after July 1, 1998, and each year thereafter, the Department of Administrative Services is authorized and directed to pay into the fund, from funds appropriated or otherwise available for the operation of the superior courts of this state, an amount sufficient to pay the administrative expenses of the fund

as certified by the board to the Department of Administrative Services."

The 2010 amendment, effective July 1, 2010, substituted "The Council of Superior Court Judges of Georgia, The Council of State Court Judges of Georgia" for "the Council of Superior Court Judges of Georgia, the Council of State Court Judges of Georgia" twice.

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions

and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, ben-

efit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

47-23-26. Administration of fund.

The board shall contract with the Employees' Retirement System of Georgia for the administration of the fund. (Code 1981, § 47-23-26, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-27. Legal adviser.

The Attorney General shall be legal adviser of the board. (Code 1981, § 47-23-27, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-28. Transfer of contributions from earlier funds.

All employer and employee contributions, plus the earnings on such amounts, made to a predecessor retirement system by or on behalf of any member of this retirement system, together with all other funds and assets held by such retirement systems shall be transferred to the Georgia Judicial Retirement System Fund created by this article on July 1, 1998. (Code 1981, § 47-23-28, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-29. Survivors benefits — Group term life insurance.

(a) Wherever the term "survivors benefits" is used or referred to in this chapter, it shall be construed to be group term life insurance. Whenever reference is made in this Code section to members of this retirement system, such reference shall include active superior court judges subject to Chapter 8 of this title.

(b) Pursuant to the provisions of this Code section and rules and regulations adopted for such purpose, the board of trustees may provide for survivors benefits for members, former members, and retired members of the retirement system; provided, however, that the provisions of this Code section shall apply only to persons who are active members of this retirement system on or after July 1, 2002; provided, further, that no person who becomes or again becomes a member of this retirement system on or

after July 1, 2009, shall be entitled to survivors benefits under this Code section.

(c) Contributions for survivors benefits shall be provided for and administered in the following manner:

(1) After notice from the board of trustees, each employer shall cause to be deducted from the earnable monthly compensation of each member an additional amount established by the board of trustees, but such amount shall not exceed one-half of 1 percent of the member's earnable monthly compensation. Such deductions shall be made under the same conditions as set forth in Code Section 47-23-41. A member's payment for coverage shall vest in the member no rights other than for the period for which the member has paid the required additional contributions into the survivors benefit fund; and

(2) There is authorized an employer payment to the fund which shall be a percentage of the earnable monthly compensation of the members of the retirement system. The board of trustees shall establish the rate of such payment, but in no case shall such rate, when added to the members' contributions, exceed 1 percent. Funds for employer payment shall be requested in the same manner as provided in Article 5 of this chapter.

(d) The board of trustees may adopt any rules or regulations which are not in conflict with this Code section and which it deems necessary in establishing and maintaining the plan of operation, including benefit tables and other provisions of coverage.

(e) The survivors benefits program may provide for a reduction of benefits after the attainment of a certain age and for a different or no contribution after retirement based on such reduction in benefits. The board of trustees is authorized to promulgate rules and regulations to carry out this subsection.

(f) Any other provisions of this chapter or any rules or regulations to the contrary notwithstanding, any member who withdraws from service before attaining age 60 but whose right to a service retirement allowance has vested under Code Section 47-23-102 may continue paying the amount under this Code section which the member was paying at the time of withdrawing from service, together with the amount of the employer contribution in effect at the time of such withdrawal, in which case the benefits under this Code section shall remain fixed at the same amount as they would have been had the member died on the day immediately preceding the member's withdrawal. Only those members with at least 18 years of creditable service at the time of withdrawal from service shall be eligible under this subsection, subject to the provisions of subsection (e) of this Code section. (Code 1981, § 47-23-29, enacted by Ga. L. 2002, p. 1485, § 1; Ga. L. 2005, p. 535, § 32/HB 460; Ga. L. 2007, p. 176, § 4/HB 448; Ga. L. 2009, p. 398, § 4/SB 177.)

The 2009 amendment, effective July 1, 2009, added the last proviso at the end of subsection (b).

47-23-30. Contract for group term life insurance protection.

The board of trustees may provide group term life insurance protection for the members of the retirement system as the survivors benefits program provided for in Code Section 47-23-29 by contracting for such service with the board of trustees of the Employees' Retirement System of Georgia for the inclusion of members of this retirement system in the program of group life insurance protection conducted for the benefit of the members of such retirement system. Such contract must provide benefits to those persons entitled to benefits under Code Section 47-23-29. Contributions for such coverage shall be provided for and collected as set forth in subsection (c) of Code Section 47-23-29. (Code 1981, § 47-23-30, enacted by Ga. L. 2002, p. 1485, § 1; Ga. L. 2007, p. 176, § 5/HB 448.)

47-23-31. Plan year designated.

For purposes of complying with federal Internal Revenue Service rules and regulations, the plan year for this retirement system shall be the 12 month period beginning on July 1 of each year. (Code 1981, § 47-23-31, enacted by Ga. L. 2009, p. 947, § 32/HB 202.)

Effective date. — This Code section became effective May 11, 2009.

47-23-30, as enacted by Ga. L. 2009, p. 947, § 32, was redesignated as Code Section

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, Code Section

47-23-31.

ARTICLE 3

MEMBERSHIP IN THE SYSTEM

47-23-40. Eligibility.

Any person who on June 30, 1998, was an active, inactive, or retired member of a predecessor retirement system shall be transferred to this retirement system in the same status effective July 1, 1998. Any person who on June 30, 1998, was a beneficiary of a predecessor retirement system shall become a beneficiary of this retirement system in the same status effective July 1, 1998; provided, however, that, except as otherwise expressly provided, the benefits of any beneficiary so transferred shall continue to be calculated as such benefits were calculated on June 30, 1998. (Code 1981, § 47-23-40, enacted by Ga. L. 1998, p. 513, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under Ga. L. 1976, p. 586 are included in the annotations for this Code section.

Judge not member of trial judges fund joins retirement system. — Superior court judge who took office as such after June 30, 1968, and who did not become a member of the Trial Judges and Solicitors Retirement Fund, is authorized and required to become a member of the retirement system. 1976 Op. Att'y Gen. No. U76-49 (decided under Ga. L. 1976, p. 586).

New judge after 1976 becomes member of this system. — One becoming a superior court judge for the first time after December 31, 1976, must belong to the Superior Court Judges Retirement System, and may not belong to the Superior Court Judges Retirement Fund of Georgia (see O.C.G.A. § 47-8-1 et seq.). 1981 Op. Att'y Gen. No. 81-101 (decided under Ga. L. 1976, p. 586).

Member in 1976 required to pay for prior

years. — Superior court judge is required to pay to the retirement system, under Ga. L. 1976, p. 586, § 8 prior to December 31, 1976, the employee contributions for 16 years of service as a superior court judge, plus interest at the rate of 6 percent per year for each of the 16 years. 1976 Op. Att'y Gen. No. U76-32 (decided under Ga. L. 1976, p. 586).

Judges transferred in 1976 credited with prior service. — Superior court judges who are transferred to the retirement system from the Trial Judges and Solicitors Retirement Fund are entitled to be credited with all creditable service earned under the trial judges system, including creditable service earned in a capacity other than a superior court judge; this is limited to those superior court judges who are transferred from trial judges to the 1976 retirement system on December 31, 1976. 1976 Op. Att'y Gen. No. 76-83 (decided under Ga. L. 1976, p. 586).

47-23-41. Employee contributions.

(a) Any person who becomes a superior court judge, a judge or solicitor-general of a state court, a juvenile court judge, or a district attorney on or after July 1, 1998, shall be a member of this retirement system and shall make employee contributions into the fund. The provisions of this subsection shall not apply to a person who elected membership in the Employees' Retirement System of Georgia pursuant to Code Section 47-2-260.

(b) No juvenile court judge who also serves as a judge or solicitor-general of a state court shall be eligible to obtain separate service under this chapter for each position held, and such service shall be combined for the purposes of this chapter. Any person holding two such positions shall make employee contributions under this chapter on the basis of the compensation received for both such positions, and the compensation received for both such positions shall be combined for all purposes under this chapter. (Code 1981, § 47-23-41, enacted by Ga. L. 1998, p. 513, § 1.)

JUDICIAL DECISIONS

Cited in McKelvey v. Ga. Judicial Ret. Sys., 297 Ga. App. 650, 678 S.E.2d 120 (2009).

47-23-42. Judges and solicitors-general of state courts ineligible.

Judges and solicitors-general of state courts who are members of the Employees' Retirement System of Georgia pursuant to Code Section 47-2-290 shall not be eligible to become members of this retirement system. (Code 1981, § 47-23-42, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-43. Preservation of prior rights under this Code section by certain attorneys employed by Legislative Counsel or Department of Law.

Any person employed pursuant to Code Section 28-4-3 or 45-15-31 subject to the provisions of this Code section on June 30, 2005, shall retain all rights and obligations as exist on that day. Such persons shall be subject to all provisions of this chapter applicable to solicitors-general of the state courts. Employer contributions shall be paid by the respective employers under such Code sections. (Code 1981, § 47-23-43, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2005, p. 57, § 1/HB 492; Ga. L. 2009, p. 315, § 1/HB 210.)

The 2009 amendment, effective July 1, 2009, inserted "employed pursuant to Code Section 28-4-3 or 45-15-31" near the beginning of the first sentence and added the last sentence.

Editor's notes. — The persons subject to provisions of this Code section as it existed on June 30, 2005, included certain attorneys

employed by the Office of Legislative Counsel pursuant to Code Section 28-4-3 and by the Department of Law pursuant to Code Section 45-15-31. For provisions of this Code section that were in effect on June 30, 2005, see Ga. L. 1998, p. 513, § 1, as amended by Ga. L. 2000, p. 131, § 1.

47-23-44. Members receiving benefits from predecessor retirement systems; creditable service with other systems.

(a) The provisions of this Code section shall apply only to persons who become members or beneficiaries of this retirement system by operation of Code Section 47-23-40.

(b) Any beneficiary of this retirement system subject to the provisions of this Code section who on June 30, 1998, was receiving a benefit from two predecessor retirement systems shall continue to receive both such benefits from this retirement system as if he or she were a beneficiary of two retirement systems.

(c) Any member subject to this Code section who on June 30, 1998, is receiving a retirement benefit from one predecessor retirement system and is an active member of another predecessor retirement system shall continue to receive such retirement benefit from this retirement system and shall continue as an active member of this retirement system. Upon complying with all conditions precedent to receiving a benefit under this retirement system, such member shall be entitled to receive both such

benefits in the same manner as if he or she were a member of two separate retirement systems.

(d) Any member subject to the provisions of this Code section who on June 30, 1998, has ten or more years of creditable service in one predecessor retirement system but has not yet begun receiving a retirement benefit and who on such date was an active member of another predecessor retirement system may:

(1) Continue his or her status in this retirement system as if he or she were a member of two retirement systems, and upon retirement his or her retirement benefits in both capacities shall be calculated as provided under this retirement system; or

(2) Combine the years of service under the predecessor retirement system with his or her years of service under this retirement system as provided in Code Section 47-23-45.

(e)(1) As used in this subsection, the term “category of covered position” means service as:

(A) A judge of the superior courts;

(B) A judge or solicitor-general of a state court or a juvenile court judge; or

(C) A district attorney.

(2) Any member subject to the provisions of this Code section who after June 30, 1998, obtains ten or more years of service in one category of covered positions and who subsequently becomes employed in another category of covered position may, at his or her option:

(A) Consider himself or herself vested in a retirement benefit in the initial position and begin accruing service in the subsequent position as if he or she were a member of two retirement systems; or

(B) Combine the years of service under this retirement system as provided in Code Section 47-23-45. (Code 1981, § 47-23-44, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-45. Effect of change in employment.

Any member of this retirement system shall be entitled to remain as a member by holding any position or office covered by the fund and shall receive full credit for all service as a member despite his or her change from one position or office to another covered by the fund. Upon becoming eligible for retirement, however, retirement benefits shall be determined in accordance with Code Sections 47-23-101 and 47-23-102. (Code 1981, § 47-23-45, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-46. Members from District Attorneys' Retirement System.

Any member who on June 30, 1998, was entitled to remain a member of the District Attorneys' Retirement System while employed in a position covered by Chapter 2 of this title pursuant to the provisions of Code Section 47-13-40.1, as such Code section appeared on June 30, 1998, shall have the same privileges with regard to this retirement system. This Code section shall not apply to any other member of this retirement system. (Code 1981, § 47-23-46, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2000, p. 1697, § 2; Ga. L. 2010, p. 1207, § 61/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted the former subsection (a) designation and deleted former subsection (b), which read: "Any person who became a member of this retirement system pursuant to the operation of Code Section 47-23-40 and who, prior to becoming a member of a predecessor retirement system, was a member of the Employees' Retirement System of Georgia may elect to transfer his or her membership from this retirement system to the Employees' Retirement System of Georgia. Any person desiring to transfer membership shall notify the board of this retirement system and the board of trustees of the Employees' Retirement System of Georgia not later than December 31, 2000. Upon receipt of such notice, the board of trustees of this retirement system shall transfer to the board of trustees of the Employees' Retirement System of Georgia all employer and employee contributions paid by or on behalf

of such member, together with regular interest thereon."

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

47-23-47. Transfer of members' contributions.

The board of trustees shall transfer to the Employees' Retirement System of Georgia all contributions made to the fund by a member who transfers to the Employees' Retirement System of Georgia; and The Council of Superior Court Judges of Georgia, The Council of State Court Judges of Georgia, the Council of Juvenile Court Judges, and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are authorized and directed to pay from the funds appropriated or otherwise available an additional amount equal to the 5 percent contribution of such member plus an additional 20 percent of the contribution, so that the state contribution shall be in accordance with the Employees' Retirement System of Georgia. (Code 1981, § 47-23-47, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2009, p. 753, § 16/SB 109; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2010, in the middle, substituted “Council of Superior Court Judges of Georgia, the Council of State Court Judges of Georgia, the Council of Juvenile Court Judges, and the Prosecuting Attorneys’ Council of the State of Georgia, as appropriate, are” for “commissioner of administrative services is” and substituted “or otherwise available” for “for the operating expenses of the superior courts of this state”.

The 2010 amendment, effective July 1, 2010, substituted “The Council of Superior Court Judges of Georgia, The Council of State Court Judges of Georgia” for “the Council of Superior Court Judges of Georgia, the Council of State Court Judges of Georgia” in the middle.

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia

Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

47-23-48. Election of retirement system; effect of subsequent legislation.

(a)(1) Any member of this retirement system who is vested for a normal retirement benefit who without a break in service becomes the head of a state department or agency or who is appointed by the Governor to a full-time salaried position on a state board or commission may make a one time irrevocable election to remain a member of this retirement system, in which event the employer and employee shall make all contributions to this retirement system and perform such other acts as are required by law or regulation.

(2) This subsection shall be applicable to each person who was a member of this retirement system on July 1, 2000, and to any person who becomes a member after that date. Any person eligible to make the election provided for in this subsection shall do so in writing to the board of trustees of this retirement system and the Board of Trustees of the Employees’ Retirement System of Georgia not later than September 30, 2000, or within 60 days after the date he or she became employed in a position which would otherwise obligate him or her to become a member of this retirement system, whichever date is later. Once made, the election is irrevocable.

(3) Any person subject to this subsection who elects to become a member of this retirement system may have accumulated contributions under the Employees’ Retirement System of Georgia transferred to this retirement system. The board of trustees of the Employees’ Retirement

System of Georgia shall pay to the board of trustees of this retirement system all employer and employee contributions made by or on behalf of the member, together with regular interest. The member shall be granted only so much creditable service as such amount will warrant without creating any accrued actuarial unfunded liability as to this retirement system; provided, however, that such service credits shall not be used in determining the qualifications of a member for benefits other than vested rights or disability, death, or normal service retirement allowances.

(b) The provisions of this Code section shall not become a part of the employment contract and shall be subject to subsequent legislation; provided, however, that no person who has made the election provided by this Code section shall be affected by any subsequent legislation. (Code 1981, § 47-23-48, enacted by Ga. L. 2000, p. 1693, § 2.)

47-23-49. Irrevocable election by individuals employed but previously ineligible; creditable service.

Reserved. Repealed by Ga. L. 2010, p. 1207, § 62, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 47-23-49, enacted by Ga. L. 2000, p. 1696, § 1; Ga. L. 2001, p. 21, § 1.

Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized

and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

47-23-50. Retirement options for state judges serving Fulton County.

Any person who becomes a judge of the State Court of Fulton County on or after July 1, 2004, shall become a member of this retirement system by operation of law and shall not be a member of any other public retirement system. (Code 1981, § 47-23-50, enacted by Ga. L. 2004, p. 573, § 2; Ga. L. 2005, p. 46, § 1/HB 178; Ga. L. 2010, p. 1207, § 63/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted the former subsection (a) designation and deleted former subsection (b), which read: "Any person serving as a judge of the State Court of Fulton County on June 30, 2004, may make an irrevocable

election to become a member of this retirement system by so notifying the board of trustees not later than December 31, 2004. The local retirement system of which such person is a member shall transfer to this retirement system all employer and em-

ployee contributions paid by or on behalf of any such member with regular interest thereon. Such member shall receive only such creditable service, not to exceed the actual years of creditable service, as that amount will warrant without creating any accrued actuarial liability to this retirement system, calculated as if the member had either elected or rejected spouses' survivors benefits at the member's option. Such persons shall be subject to all provisions of this chapter."

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit,

or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

ARTICLE 4

SERVICE CREDITABLE

47-23-60. Transfer of service credits.

Any creditable service credited to any member of this retirement system pursuant to a predecessor retirement system shall be deemed to be creditable service for the purposes of this chapter, effective July 1, 1998. (Code 1981, § 47-23-60, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-61. Establishing creditable service.

Any member who on June 30, 1998, was entitled to receive creditable service for prior service as a state court judge, state court solicitor-general, or juvenile court judge pursuant to the provisions of Code Section 47-9-41.1, as such Code section appeared on June 30, 1998, shall be entitled to establish creditable service under this retirement system, under the same conditions, for such prior service rendered prior to July 1, 1998. This Code section shall not apply to any other member of this retirement system. (Code 1981, § 47-23-61, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-62. Obtaining creditable service; obtaining creditable service in other systems; calculations.

(a)(1) Any member who became a member on July 1, 1998, and any member who becomes a member after that date may receive creditable service for the number of years he or she contributed to the Employees' Retirement System of Georgia pursuant to Code Section 47-2-262.

(2) In order to obtain the creditable service as provided in paragraph (1) of this subsection, the member shall notify the board of directors of this retirement system and the board of trustees of the Employees' Retirement System of Georgia not later than December 31, 1998, or within 90 days after first becoming a member of this retirement system, whichever date is later. Upon such notice, the board of trustees of the Employees' Retirement System of Georgia shall verify the amount of allowable time to the board of trustees of this retirement system. If the requesting member has withdrawn his or her contributions from the Employees' Retirement System of Georgia, the board of trustees of such retirement system shall certify the amount of employee contributions and regular interest thereon which had been credited to the member's account, and the member shall within six months after such certification pay such amount to the board of trustees of this retirement system, together with regular interest thereon from the date of withdrawal to the date of payment. If the requesting member has not withdrawn his or her contributions from the Employees' Retirement System of Georgia, the board of trustees of such retirement system shall transfer to the board of trustees of this retirement system the employee contributions together with regular interest thereon and shall refund to the member any employee contribution he or she paid to such retirement system for any creditable service not allowed by the retirement system. Upon receipt of such funds, the board of trustees of this retirement system shall credit the member with the number of years of creditable service so authorized.

(b)(1) Any member may receive creditable service for the number of years he or she would have contributed to the Employees' Retirement System of Georgia pursuant to Code Section 47-2-262 but for the fact that he or she made the election not to become a member of such retirement system.

(2) In order to obtain the creditable service as provided in paragraph (1) of this subsection, the member shall notify the board of directors of this retirement system and the board of trustees of this retirement system not later than December 31, 1998, or within 90 days after first becoming a member of this retirement system, whichever date is later, providing such evidence that he or she was eligible for membership in the Employees' Retirement System of Georgia as the board deems necessary. Within six months after such notification, the member shall pay to the board of trustees of this retirement system the employer and employee contributions which would have been paid by or on behalf of such member if he or she had elected to become a member of the Employees' Retirement System of Georgia, together with regular interest thereon.

(c) No creditable service may be obtained pursuant to the provisions of this Code section for any period for which creditable service has or may be obtained in any other state or local public retirement system.

(d) No creditable service obtained pursuant to the provisions of this Code section shall be calculated in determining the minimum number of years of creditable service required for retirement pursuant to Article 6 of this chapter. (Code 1981, § 47-23-62, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-63. Definition and effect of full-time and part-time service; calculations.

(a) As used in this Code section, the term:

(1) “Full-time service” means any service in a covered position during which such member was generally prohibited from the practice of law by virtue of holding such position.

(2) “Part-time service” means any service in a covered position during which such member was not generally prohibited from the practice of law by virtue of holding such position.

(b) Any member who, on the effective date of his or her retirement, was serving in a part-time position shall be entitled to use all of his or her prior service credit for purposes of vesting for benefits and for the calculation of benefits.

(c) Any member who on the effective date of his or her retirement was serving in a full-time position shall not be entitled to use any prior part-time service for vesting for benefits and shall be entitled to use such prior service for the calculation of benefits on the basis of one month of credit for each three months of prior part-time service.

(d) Notwithstanding any provision of subsection (b) or (c) of this Code section to the contrary, any member who became a member pursuant to Code Section 47-23-40 shall be entitled to calculate his or her service as provided in the predecessor retirement system of which he or she was a member. (Code 1981, § 47-23-63, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-64. Transfer of funds from Employees’ Retirement System of Georgia by judges, solicitor general, or district attorneys; crediting service.

(a)(1) Any superior court judge, state court judge, solicitor general, or district attorney who was previously an active member of the Employees’ Retirement System of Georgia may elect to have all contributions made by or on behalf of such member transferred from such retirement system to this retirement system. Any such member shall notify the board of trustees of each retirement system not later than December 31, 2002, or within 90 days after first becoming a member of this retirement system, whichever date is later.

(2) If the member subject to this subsection has not withdrawn his or her employee contributions from the Employees’ Retirement System of

Georgia, then upon receipt of the notice provided for in paragraph (1) of this subsection, the Board of Trustees of the Employees' Retirement System of Georgia shall transfer to the board of trustees of this retirement system all employer and employee contributions paid by or on behalf of the employee, together with regular interest thereon.

(3) If the member subject to this subsection has withdrawn his or her employee contributions from the Employees' Retirement System of Georgia, then at the time of giving the notice provided for in paragraph (1) of this subsection, the member shall pay to the board of trustees of this retirement system the total of such contributions, together with regular interest thereon. Upon receipt of such notice and payment of such amount, the Board of Trustees of the Employees' Retirement System of Georgia shall transfer to the board of trustees of this retirement system all employer contributions paid on behalf of the employee, together with regular interest thereon.

(4) The member subject to this subsection is authorized, but not required, to pay to the board of trustees such funds in addition to the amounts provided in paragraphs (2) and (3) of this subsection as the member desires.

(b) Upon receipt of the funds provided for in paragraphs (2), (3), and (4) of subsection (a) of this Code section, the board of trustees of this retirement system shall credit the member with only the number of years of creditable service, not to exceed the actual years of prior service, as the amount so transferred or paid will warrant without creating any accrued liability as to this retirement system, calculated as if the member had either elected or rejected spouse's survivors benefits, at the election of the member.

(c) No creditable service may be obtained pursuant to the provisions of this Code section for any period for which creditable service has been or may be obtained in any other state or local public retirement system. (Code 1981, § 47-23-64, enacted by Ga. L. 2000, p. 1691, § 1; Ga. L. 2001, p. 21, § 1; Ga. L. 2002, p. 1488, § 1.)

47-23-65. Creditable service for certain prior service.

Any superior court judge or district attorney who is an active member of this retirement system may receive up to five years of creditable service for his or her past service as a circuit-paid assistant district attorney who was not eligible to participate in a local retirement plan upon payment to the board of trustees of an amount which will allow such creditable service without creating any accrued actuarial unfunded liability as to this retirement system. Any member desiring such creditable service shall make application to the board of trustees in such form as the board deems appropriate, provide such proof of eligible prior service as the board deems necessary,

and make full payment not later than December 31, 2008, or within six months of first or again becoming a member, whichever is later. No creditable service shall be allowed under this Code section for any period of employment for which creditable service is allowed under any provision of any other retirement or pension system of this state or of any political subdivision of this state. (Code 1981, § 47-23-65, enacted by Ga. L. 2008, p. 1005, § 3/SB 328.)

Effective date. — This Code section became effective July 1, 2008.

ARTICLE 5 CONTRIBUTIONS

47-23-80. Contributions by superior court judges and district attorneys; employer contributions.

(a) The provisions of this Code section shall be applicable to judges of the superior courts and district attorneys. The amount of employee contributions to the fund by superior court judges shall be 7 1/2 percent of the earnable monthly compensation from state funds provided by law for judges of the superior courts. The amount of employee contributions to the fund by district attorneys shall be 7 1/2 percent of the earnable monthly compensation from state funds provided by law for district attorneys. The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are authorized to deduct 7 1/2 percent monthly from the earnable monthly compensation of each judge of the superior courts and each district attorney who is a member of the retirement system to cover the employee contributions to the fund. The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are also authorized to make an additional deduction from such earnable monthly compensation to cover any required employee tax for social security coverage. The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are authorized and directed to pay, from the funds appropriated or otherwise available, any required employer contribution for social security coverage on such judges and district attorneys. From funds appropriated or otherwise available, The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are authorized and directed to pay into the fund the employer contributions, including contributions to fund any creditable service authorized by this chapter, which, together with employee contributions and the earnings of the fund, shall be an amount sufficient to fund the service and disability retirement benefits and the spouses' benefits under this chapter.

(b) The deductions from state earnable monthly compensation and allowances payable to judges of the superior courts and district attorneys

shall be made, notwithstanding that the compensation and allowances fixed by law for such judges and district attorneys shall be reduced thereby. Such judges and district attorneys shall be deemed to consent and agree to the deductions made; and payment of the earnable monthly compensation and allowances, less such deductions, shall be a full and complete discharge of all claims and demands whatsoever for the services rendered by such judges and district attorneys during the period covered by such payment.

(c) The employer shall pay to the retirement system on each and every payroll period employee contributions on behalf of and to the credit of each judge and district attorney in an amount equal to the amount which would be paid to the annuity savings fund pursuant to Code Section 47-2-54 if the judge or district attorney were a member of the Employees' Retirement System of Georgia. Such members shall continue to have deducted from their state earnable monthly compensation the additional amount of employee contributions required by this chapter. Such monthly contributions made by the employer on behalf of a member shall be included in the computation of the member's state earnable monthly compensation for purposes of computing retirement benefits.

(d) All members shall retain, have, and be subject to all other rights, privileges, obligations, and duties otherwise provided for in this chapter; and all such other provisions shall remain of full force and effect with respect to any matter not specifically provided for in subsection (c) of this Code section. (Code 1981, § 47-23-80, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2005, p. 535, § 33/HB 460; Ga. L. 2009, p. 753, § 17/SB 109; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2010, in subsection (a), substituted "Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia, as appropriate, are" for "Department of Administrative Services is" throughout, deleted "for the operation of the superior courts of this state" preceding "any required" in the sixth sentence, and deleted "for the operation of superior courts" following "available" in the seventh sentence.

The 2010 amendment, effective July 1, 2010, substituted "The Council of Superior Court Judges of Georgia" for "the Council of Superior Court Judges of Georgia" near the beginning of the last sentence of subsection (a).

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia

Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

47-23-81. Contributions by judges and solicitors-general of state courts; employer contributions; reports required.

(a) The provisions of this Code section shall be applicable to judges and solicitors-general of state courts. The basis for employer and employee contributions to the fund with respect to a judge or solicitor-general of a state court shall be the actual earnable monthly compensation received as such judge or solicitor-general; provided, however, that for members who become members after July 1, 1998, such amount shall not exceed the earnable monthly compensation from state funds provided by law for superior court judges.

(b)(1) The employee contributions with respect to judges and solicitors-general of state courts who are compensated by earnable monthly compensation paid by the employing units which pay the costs of the operation of such courts shall be 7 1/2 percent of the amount of such earnable monthly compensation. A person to be designated by each such employing unit shall report the amount of such earnable monthly compensation to the board by not later than the fifteenth day of each calendar month. The employing units are authorized to pay any portion of the employee contribution and to deduct employee contributions from the earnable monthly compensation of such judges and solicitors-general and to pay the contributions into the fund. An employing unit which so elects to pay any portion of the employee contribution shall apply such provisions on behalf of all state court judges and solicitors-general employed by such employing unit now or in the future, and such provisions shall apply only to the earnable monthly compensation earned by the employing unit's state court judges and solicitors-general after the effective date of the election by such employing unit to pay such member's employee contributions. Such contributions shall be forwarded to the board at the same time the report of the earnable monthly compensation of such judges and solicitors-general is forwarded. The employing units are also authorized to make an additional deduction from such earnable monthly compensation to cover any required employee tax for social security coverage. The deduction from the earnable monthly compensation payable to such judges and solicitors-general of state courts shall be made, notwithstanding that such earnable monthly compensation fixed by law for such judges and solicitors-general is reduced thereby. Such judges and solicitors-general shall be deemed to consent and agree to the deductions made; and payment of such earnable monthly compensation, less such deductions, shall be a full and complete discharge of all claims and demands whatsoever for the services rendered by such judges and solicitors-general during the period covered by such payment.

(2) The Council of State Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to

pay into the fund provided for by this chapter monthly employer contributions, including contributions to fund any creditable service authorized by this chapter. Such amounts are to be determined by the board and, together with employee contributions and the earnings of the fund, shall be an amount sufficient to fund the service and disability retirement benefits under this chapter. The Council of State Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia are authorized and directed to pay from the funds appropriated or otherwise available any required employer contribution for social security coverage on such members.

(c)(1) It shall be the duty of each employing unit affected by this chapter to designate a responsible person to submit the reports and forward the employee contributions set forth in this Code section. It shall be the duty of the person so designated to comply with this Code section. If the required reports and employee contributions are not forwarded to the board or if duplicate copies of the reports are not directed to the Office of the State Treasurer, in accordance with this Code section, as appropriate, the Office of the State Treasurer is authorized to withhold any state payments payable to the governmental unit failing to forward such reports and employee contributions until such time as such reports and contributions have been received.

(2) It shall be the duty of the clerk of each state court to notify The Council of State Court Judges of Georgia, the Prosecuting Attorneys' Council of the State of Georgia, and the board of directors of this retirement system of the election or appointment of a new state court judge or solicitor-general or the vacating of any such office. Such notification shall be made within two weeks of such election, appointment, or vacancy.

(3) Each employing unit affected by this chapter shall provide The Council of State Court Judges of Georgia, the Prosecuting Attorneys' Council of the State of Georgia, and the board of directors of this retirement system with a list of all employees of the employing unit who are current members of this retirement system. Such report shall be made each calendar month.

(d) All members shall retain, have, and be subject to all other rights, privileges, obligations, and duties otherwise provided for in this chapter; and all such other provisions shall remain of full force and effect with respect to any matter not specifically provided for in subsection (c) of this Code section. (Code 1981, § 47-23-81, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2005, p. 535, § 34/HB 460; Ga. L. 2009, p. 753, §§ 18, 19/SB 109; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2009 amendment, effective July 1, 2010, in paragraph (b)(2), substituted "The Council of State Court Judges of Georgia and the Prosecuting Attorneys' Council of

the State of Georgia are” for “From funds appropriated or otherwise available for the operation of superior courts, the Department of Administrative Services is” at the beginning of the first sentence and, in the last sentence, substituted “Council of State Court Judges of Georgia and the Prosecuting Attorneys’ Council of the State of Georgia are” for “Department of Administrative Services is” and deleted “for the operation of the superior courts of the state” following “available”; and, in subsection (c), designated the existing provisions as paragraph (c)(1) and added paragraphs (c)(2) and (c)(3).

The 2010 amendments. — The first 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” twice in the third sentence of paragraph (c)(1). The second 2010 amendment, effective July 1, 2010, substituted “The Council” for “the Council” near the beginning of paragraphs (c)(2) and (c)(3).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to

repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: “In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict.”

JUDICIAL DECISIONS

Reimbursed expenses are administrative expense and not salary. — Under O.C.G.A. §§ 47-23-1, 47-23-81, and 47-23-100, “salary” is defined as the full rate of regular compensation for full working time. The Georgia Judicial Retirement System, in calculating a former solicitor general’s benefits, was au-

thorized to exclude from this definition sums the county paid to the solicitor general as reimbursement for office expenses that the county would otherwise have incurred—amounts that were not reported as income to the IRS. *McKelvey v. Ga. Judicial Ret. Sys.*, 297 Ga. App. 650, 678 S.E.2d 120 (2009).

47-23-82. Contributions by juvenile court judges; employer contributions; reports required.

(a) The provisions of this Code section shall be applicable to juvenile court judges. The basis for employer and employee contributions to the fund with respect to juvenile court judges shall be the earnable monthly compensation paid to such judges by the employing units paying the cost of the operation of the juvenile courts, unless such earnable monthly compensation exceeds the state earnable monthly compensation paid to superior court judges, as now or hereafter fixed by law, in which event the basis for such employer and employee contributions shall be the same as the state earnable monthly compensation paid to judges of the superior courts.

(b)(1) The employee contributions with respect to juvenile court judges who are compensated by earnable monthly compensation paid by the employing units which pay the costs of the operation of such courts shall be 7 1/2 percent of the amount of such earnable monthly compensation. A person to be designated by each such employing unit shall report the amount of such earnable monthly compensation to the board by not later than the fifteenth day of each calendar month. The employing units are authorized, but not required, to pay any portion of the employee contribution on behalf of the member and to deduct such employee contributions from the earnable monthly compensation of such juvenile court judges and to pay the contributions into the fund. An employing unit which so elects to pay any portion of the employee contribution shall apply such provisions on behalf of all juvenile court judges employed by such employing unit now or in the future, and such provisions shall apply only to the earnable monthly compensation earned by the employing unit's juvenile court judges after the effective date of the election by such employing unit to pay such member's employee contributions. Such contributions shall be forwarded to the board at the same time the report of the earnable monthly compensation of such juvenile court judges is forwarded. The employing unit is also authorized to make an additional deduction from such earnable monthly compensation to cover any required employee tax for social security coverage. The deduction from the earnable monthly compensation payable to such juvenile court judges shall be made, notwithstanding that such earnable monthly compensation fixed by law for such juvenile court judges is reduced thereby. Such juvenile court judges shall be deemed to consent and agree to the deductions made; and payment of such earnable monthly compensation, less such deductions, shall be a full and complete discharge of all claims and demands whatsoever for the services rendered by such juvenile court judges during the period covered by such payment.

(2) The Council of Juvenile Court Judges is authorized and directed to pay into the fund provided for by this chapter monthly employer contributions, including contributions to fund any creditable service authorized by this chapter. Such amounts are to be determined by the board and, together with employee contributions and the earnings of the fund, shall be an amount sufficient to fund the service and disability retirement benefits under this chapter.

(c) It shall be the duty of each employing unit affected by this chapter to designate a responsible person to submit the reports and forward the employee contributions set forth in this Code section. It shall be the duty of the person so designated to comply with this Code section. If the required reports and employee contributions are not forwarded to the board or if duplicate copies of the reports are not directed to the Office of the State Treasurer, in accordance with this Code section, as appropriate, the Office of the State Treasurer is authorized to withhold any state payments payable

to the governmental unit failing to forward such reports and employee contributions until such time as such reports and contributions have been received.

(d) All members shall retain, have, and be subject to all other rights, privileges, obligations, and duties otherwise provided for in this chapter; and all such other provisions shall remain of full force and effect with respect to any matter not specifically provided for in subsection (c) of this Code section. (Code 1981, § 47-23-82, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2005, p. 535, § 35/HB 460; Ga. L. 2009, p. 753, § 20/SB 109; Ga. L. 2010, p. 863, § 2/SB 296.)

The 2009 amendment, effective July 1, 2010, substituted “The Council of Juvenile Court Judges” for “From funds appropriated or otherwise available for the operation of superior courts, the Department of Administrative Services” at the beginning of the first sentence of paragraph (b)(2).

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” twice in the last sentence of subsection (c).

47-23-83. Termination of membership prior to vesting.

Whenever any member of this retirement system terminates his or her membership prior to acquiring a vested right to any retirement benefits and withdraws his or her total employee contributions, plus regular interest, from the funds held by the board, the following shall occur:

(1) The employer’s contributions paid to the board on behalf of such withdrawing member shall continue to be held within the funds controlled and administered by the board and shall not be returned to the employer; and

(2) The employer’s contributions paid to the board on behalf of such withdrawing member shall be treated as actuarial gains and shall be applied toward the future decrease of employer’s contributions and shall not be used or applied to increase retirement benefits to other members of the retirement system. (Code 1981, § 47-23-83, enacted by Ga. L. 1998, p. 513, § 1.)

ARTICLE 6

SALARY, RETIREMENT, DEATH, AND DISABILITY BENEFITS

47-23-100. Salary defined.

(a) As used in this article, the term “salary” means:

(1) For superior court judges, the earnable monthly compensation from state funds provided by law for judges of the superior courts on the date the member begins receiving a retirement benefit;

(2) For district attorneys, the earnable monthly compensation from state funds provided by law for district attorneys on the date the member begins receiving a retirement benefit;

(3) For judges and solicitors-general of state courts, the average earnable monthly compensation received as such judge or solicitor-general; provided, however, that for members who become members after July 1, 1998, such amount shall not exceed the salary from state funds provided by law for superior court judges; and

(4) For juvenile court judges, the average earnable monthly compensation received as such juvenile judge; provided, however, that for members who become members after July 1, 1998, such amount shall not exceed the salary from state funds provided by law for superior court judges.

(b) The monthly employee contributions made by the employer on behalf of the member under Code Sections 47-23-80, 47-23-81, and 47-23-82 shall be used in the computation of the member's salary for the computation of the member's retirement benefits.

(c) Notwithstanding any provision of this chapter to the contrary, a member's salary shall be subject to limitations set forth in Code Section 47-1-13. (Code 1981, § 47-23-100, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 1999, p. 20, § 1; Ga. L. 2005, § 36/HB 460.)

JUDICIAL DECISIONS

Reimbursed administrative expenses not salary. — Under O.C.G.A. §§ 47-23-1, 47-23-81, and 47-23-100, "salary" is defined as the full rate of regular compensation for full working time. The Georgia Judicial Retirement System, in calculating a former solicitor general's benefits, was authorized to

exclude from this definition sums the county paid to the solicitor general as reimbursement for office expenses that the county would otherwise have incurred—amounts that were not reported as income to the IRS. *McKelvey v. Ga. Judicial Ret. Sys.*, 297 Ga. App. 650, 678 S.E.2d 120 (2009).

47-23-101. Calculation of benefits based on salary after July 1, 1998.

For members who become members after July 1, 1998, no portion of any salary, as defined in Code Section 47-23-100, earned after July 1, 1998, which is used to calculate benefits under this retirement system may be used to calculate benefits under any other state or local retirement system or pension plan. (Code 1981, § 47-23-101, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-102. Vesting; benefits upon retirement.

The right of a member to receive benefits under this chapter shall vest after the member obtains ten years of creditable service; provided, however, that no member shall receive a retirement benefit prior to attaining the age

of 60 years. Except as otherwise provided in Article 2 of Chapter 1 of this title, a member’s accumulated contributions shall be 100 percent vested and nonforfeitable at all times. Any member retiring on or after July 1, 1996, and any member who was retired on July 1, 1996, with 16 years or more of creditable service shall receive a benefit equal to 66.66 percent, plus 1 percent for each year of creditable service over 16 years, of the member’s salary; provided, however, that no member shall receive more than 24 years of creditable service. Any member retiring with less than 16 years of creditable service may retire at a reduced benefit pursuant to Code Section 47-23-103. Normal retirement age under this retirement system shall be the date the member has reached age 60 years of age, provided that he or she has at least ten years of creditable service. For purposes of Section 402(1) of the federal Internal Revenue Code regarding distributions from governmental plans for health and long-term care insurance for public safety officers, normal retirement age shall be the earliest date when the member has satisfied the requirements for a retirement under this or the predecessor retirement system. Except as otherwise provided in Article 2 of Chapter 1 of this title, a member’s right to his or her retirement allowance is nonforfeitable upon attainment of normal retirement age. Any member who was retired on July 1, 1996, with more than 16 years of creditable service shall receive in July, 1998, a one-time benefit payment equal to two times the product of 1 percent of the salary paid to such judge at the time of his or her retirement multiplied by the number of years of creditable service in excess of 16 years. (Code 1981, § 47-23-102, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2009, p. 947, § 33/HB 202.)

The 2009 amendment, effective May 11, 2009, added the second sentence, and added the fifth through seventh sentences.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, Code Section 47-23-102 as enacted by Ga. L. 2002, p. 1153, § 1, was redesignated as Code Section 47-24-102.

Editor’s notes. — Pursuant to Section 2 of Ga. L. 1998, p. 147, which reads, “If that

legislation creating the Georgia Judicial Retirement System, designated as 1997 House Bill 751, is enacted and becomes law, this Act shall amend Code Section 47-23-102 of the Official Code of Georgia Annotated created by such Act,” the amendments to subsection (b) of Code Section 47-9-70 (which was repealed by Ga. L. 1998, p. 513, § 2) and newly enacted Code Section 47-23-102 were construed together to read as set out above.

JUDICIAL DECISIONS

Cited in McKelvey v. Ga. Judicial Ret. Sys., 297 Ga. App. 650, 678 S.E.2d 120 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Benefits from separate retirement systems. — Person may receive benefits from both the Judicial Retirement System and the appellate judge’s option of the Employee’s Retirement System, assuming the eligibility

requirements of both statutes have been met. 2000 Op. Atty. Gen. No. U2000-8.

Calculation of benefits. — Benefits payable to a judge with more than 16 years of creditable service are based on the salary of

a superior court judge on the date of retirement, not the actual salary of the former superior court judge seeking to retire. 2000 Op. Atty. Gen. No. U2000-8.

47-23-103. Retirement based on age; application to retire.

(a) In lieu of retirement at the benefit level provided by Code Section 47-23-102, a member may retire at any time after attaining the age of 60 years and after obtaining a minimum of ten years of creditable service. The monthly retirement benefit for such early retirement shall be a percentage of the benefit under Code Section 47-23-102, and such percentage shall be the proportion which the number of years of creditable service the member has in the retirement system bears to 16.

(b) The effective date of retirement shall be the first day of the month in which the application is received by the board of trustees, provided that no retirement shall, in any case, be effective earlier than the first day of the month following the final month of the applicant's employment. Applications for retirement shall not be accepted more than 90 days in advance of the effective date of retirement. (Code 1981, § 47-23-103, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2005, p. 535, § 37/HB 460; Ga. L. 2006, p. 1010, § 4/HB 1020.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "Code Section 47-23-102" was substituted for "Code Section 47-23-100" in the last sentence of subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under Ga. L. 1971, p. 99 and Ga. L. 1976, p. 586 are included in the annotations for this Code section.

Legislative intent. — Legislature intended to authorize members of the fund to be paid benefits based on the average annual compensation received regardless of whether that compensation was subjected in prior years to a ceiling on contributions. 1980 Op. Atty Gen. No. 80-155 (decided under Ga. L. 1976, p. 586).

Cannot accumulate more than 22 years of creditable service. — Ga. L. 1980, p. 1361, § 11 should be read to mean that no mem-

ber can accumulate more than 22 years of creditable service for the purposes of maximum retirement benefits. 1980 Op. Atty Gen. No. 80-155 (decided under Ga. L. 1976, p. 586).

Benefits not payable until age 65. — Member of the Trial Judges and Solicitors Retirement Fund may, after obtaining a minimum of ten years' creditable service, retire at any age and be entitled to a retirement benefit, but such retirement benefit is not payable until the member attains age 65 and files a written application for the retirement benefits. 1975 Op. Atty Gen. No. 75-104 (decided under Ga. L. 1971, p. 99).

47-23-104. Disability; determination of benefits; determining disability.

(a) After obtaining a minimum of four years of creditable service, any member who becomes totally and permanently disabled to the extent that he or she is unable to perform the duties of his or her office shall be entitled to receive a disability retirement benefit which shall be one-half of

the maximum retirement benefits provided by Code Section 47-23-102 for 16 years of service, unless the member would otherwise qualify for a greater benefit under Code Section 47-23-102 or 47-23-103, in which event the Code section providing the highest benefit would apply.

(b) After obtaining a minimum of ten years of actual service, any member who becomes totally and permanently disabled to the extent that he or she is unable to perform the duties of his or her office shall be entitled to receive a disability retirement benefit which shall be two-thirds of the maximum retirement benefits provided by Code Section 47-23-102.

(c) The disability of any member applying for disability retirement benefits shall be determined by the board in the same manner and under the same procedure as disability of state employees is determined in accordance with the applicable provisions of the Employees' Retirement System of Georgia. Disability retirement benefits shall become effective on the first day of the month following the month the member resigns as a result of the disability. (Code 1981, § 47-23-104, enacted by Ga. L. 1998, p. 513, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

When member ceases office and membership. — Member of the Judicial Retirement System who ceases to hold any office or

position is not eligible for disability benefits.
2001 Op. Att'y Gen. No. 01-2.

47-23-105. Spouses' benefits; ceasing spouses' benefits; vesting; designation of survivors benefits.

(a)(1) Except as otherwise provided by subsection (b) of this Code section, each member of this retirement system shall pay for spouses' benefits an employee contribution of 2 1/2 percent of the salary paid to such member. Such contribution shall be in addition to that required under Article 5 of this chapter. The employing unit shall be authorized to deduct monthly the employee contributions required for spouses' benefits. Such contribution shall cease after the member has paid the contribution for a total of 16 years.

(2) Upon the death of a member who is subject to this subsection and who has attained a minimum of ten years of creditable service and at least 60 years of age, the surviving spouse of such member shall be entitled to receive for life a monthly sum equal to 50 percent of the retirement benefit which the member was receiving at the time of the member's death, if retired at such time, or which would have been payable to the member had the member retired as of the date of the member's death.

(3) Upon the death of a member who became a member by operation of Code Section 47-23-40 and who has attained a minimum of ten years of creditable service but had not attained age 60 at the time of death, the

surviving spouse of such member shall be entitled to receive for life a monthly sum equal to 50 percent of the retirement benefit the member would have received had the member continued in service and retired at age 60.

(4) Upon the death of a member other than a member who became a member by operation of Code Section 47-23-40 and who has attained a minimum of ten years of creditable service but had not attained age 60 at the time of death, the surviving spouse of such member shall be entitled to receive for life a monthly sum equal to 50 percent of the retirement benefit the member would have received as if the member were age 60 on the date of death based on the number of years of creditable service the member had on the date of death.

(b)(1) Any member of this retirement system shall have the right to reject the spouses' benefits provided by this Code section by notifying the board in writing of such rejection on a form to be supplied by the board within 90 days after becoming a member.

(2) Any member who becomes a member of this retirement system by operation of Code Section 47-23-40 who rejected the spouses' benefits provided by this Code section pursuant to paragraph (1) of this subsection may subsequently obtain such benefits by so notifying the board in writing and by tendering all amounts which such member would have paid pursuant to subsection (a) of this Code section if such member had not rejected such benefits, together with regular interest thereon.

(c) If the spouse of a member dies or if a member ceases to be married, then such member who has elected to obtain spouses' benefits pursuant to this Code section may cease making the employee contributions for spouses' benefits. Such member shall notify the board in writing to cease deducting such employee contributions. Such notice shall be given within 90 days after the date of the death of the spouse or after the date the member ceases to be married; and, upon such notification, no further deductions shall be made. When a member ceases to make such employee contributions, there shall be no return of such contributions previously made by such member.

(d) Any member of this retirement system who rejects spouses' benefits coverage or who ceases such coverage pursuant to subsection (c) of this Code section because such member was unmarried at the time of such rejection, because such member's spouse died, or because such member ceased to be married shall have the option to elect spouses' benefits within 90 days after becoming married or remarried, as the case may be. Any member so electing must make the necessary contributions for spouses' benefits coverage for a total of at least ten years with regular interest thereon in order for such member's spouse to qualify for the spouses' benefits provided for by this Code section.

(e) In order to vest for spouses' benefits, the member must have made the employee contributions for such benefits for at least ten years.

(f) Any member at the time of retirement who has met the conditions of subsection (e) of this Code section may designate a natural person other than his or her spouse to receive a survivors benefit in the same manner and under the same conditions as provided for spouses' benefits; provided, however, that any person so designated shall receive a benefit equal to the normal spouse's benefit actuarially reduced in accordance to such person's and the member's projected life spans. Such actuarial adjustment shall be computed at regular interest upon the basis of the mortality tables and rates of interest last adopted by the board of trustees. Such benefit shall not exceed 50 percent of the member's monthly retirement benefit. (Code 1981, § 47-23-105, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 1999, p. 20, § 1; Ga. L. 2000, p. 131, § 1; Ga. L. 2005, p. 535, § 38/HB 460.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the provisions, opinions under Ga. L. 1976, p. 586 are included in the annotations for this Code section.

"Derivative" nature of spouses benefits is illustrated by fact that law does not provide for independent distribution of benefits upon death of spouse prior to death of member, or upon cessation of marriage between spouse and member. 1982 Op. Att'y Gen. No. 82-13 (decided under Ga. L. 1976, p. 586).

Designation of beneficiary. — If a judge becomes divorced and does not remarry, the judge can designate any living person (including an ex-spouse) as beneficiary to receive payment authorized. 1982 Op. Att'y Gen. No. 82-13 (decided under Ga. L. 1976, p. 586).

Effect of divorce. — Spouse, upon cessation of marriage, becomes ineligible to receive spouses benefits. 1982 Op. Att'y Gen. No. 82-13 (decided under Ga. L. 1976, p. 586).

Judge electing spouses benefits must make required contributions. — As long as a superior court judge who elects the spouses benefits coverage of Ga. L. 1976, p. 586 continues to serve as such and make the required contributions for spouses benefits, the judge must do so in accordance with the law, subject to a maximum of 16 years of contributions for the purpose of spouses benefits; however, should a superior court judge die, after having achieved ten years of

creditable service but prior to achieving 16 years of creditable service for the purpose of spouses benefits, the judge's surviving spouse would be entitled to the spouses benefits coverage. 1976 Op. Att'y Gen. No. U76-47 (decided under Ga. L. 1976, p. 586).

Judge covered under the former Judges Emeritus Fund who complied with Ga. L. 1976, p. 586, § 16 and elects the spouses benefits coverage had to continue to make the required contributions for spouses benefits during the time the judge continued to serve as a superior court judge, subject to a maximum of 16 years of contributions for the purpose of spouses benefits; upon the death of the judge, the judge's surviving spouse would be entitled to the spouses benefits provided, so long as the judge had obtained at least ten years of creditable service for the purpose of spouses benefits. 1976 Op. Att'y Gen. No. U76-60 (decided under Ga. L. 1976, p. 586).

Judge electing spouses benefits must make required contributions. — Superior court judge who was a member of the Superior Court Judges Retirement System and who paid the requisite contribution to obtain spouses benefits under that system may not recoup those contributions if the judge subsequently chooses to reject spouses benefits under the new Georgia Judicial Retirement System. 1998 Op. Att'y Gen. No. U98-13 (decided under Ga. L. 1976, p. 586).

Senior judges appointed prior to 1976

ineligible for spouses benefits coverage. — Superior court judges appointed to the office of judge of the superior courts emeritus (now senior judge) prior to the effective date of Ga. L. 1976, p. 586 were not eligible to participate in the spouses benefits coverage. 1976 Op. Att’y Gen. No. U76-67 (rendered under Ga. L. 1976, p. 586, § 16, prior to amendment by Ga. L. 1981, p. 532, §§ 1, 2).

Judge completing service and paying contributions eligible for spouses benefits coverage. — When a judge has completed the required service necessary for appointment and desires to be appointed as a senior judge of the superior courts, makes the spouses benefits election, and pays the board of trustees the required amount of contributions for the judge’s years of actual bench service by not later than the effective date of Ga. L. 1976, p. 586, and is then appointed to the office of senior judge, the judge has fulfilled the requirements of Ga. L. 1976, p. 586 and the judge’s spouse is entitled to spouses benefits upon the judge’s death. 1976 Op. Att’y Gen. No. U76-60 (decided under Ga. L. 1976, p. 586).

Creditable service other than superior court bench service. — Fact that a member of the former Judges Emeritus Fund may have creditable service other than actual superior court bench service does not impart any vested right to include the “other” service as creditable toward the acquisition

of electoral spouses benefits coverage. 1976 Op. Att’y Gen. No. U76-41 (decided under Ga. L. 1976, p. 586).

When not required to attain age 60 before senior judge appointment. — A member of the former Judges Emeritus Fund, who did not elect widows’ benefits under that fund, but who elects and qualifies for the spouses benefits coverage afforded, is not required to attain the age of 60 before being appointed as a senior judge of the superior courts. 1976 Op. Att’y Gen. No. U76-66 (decided under Ga. L. 1976, p. 586).

For discussion of contributions trial judges must make to purchase creditable service for spouses’ benefits coverage, see 1980 Op. Att’y Gen. No. 80-155 (decided under Ga. L. 1976, p. 586).

When judge or solicitor ceases office and membership. — If a judge or solicitor ceases to hold office and ceases to be a member of the fund, one may withdraw the total sum one has paid in employee contributions, including any amounts paid for spouses’ benefits coverage. 1980 Op. Att’y Gen. No. 80-155 (decided under Ga. L. 1976, p. 586).

Member of the Judicial Retirement System who ceases to hold any office or position entitled to coverage in the system is vested with the right to spouses’ benefits if the member made employee contributions for such benefits for a minimum of 10 years. 2001 Op. Att’y Gen. No. 01-2 (decided under Ga. L. 1976, p. 586).

RESEARCH REFERENCES

Am. Jur. 2d. — 60A Am. Jur. 2d, Pensions and Retirement Funds, § 1197 et seq.

47-23-106. County supplement of salaries.

(a) Whenever any county within a judicial circuit supplements the state salary paid to active superior court judges or the district attorney of said circuit, the governing authority of such county shall be authorized, but not required, to supplement the benefit being paid pursuant to this chapter to any retired superior court judge or district attorney of said circuit who is receiving benefits pursuant to this chapter or to supplement the benefit being paid pursuant to this chapter to any beneficiary of any deceased superior court judge or district attorney.

(b) Whenever any county which has a state court supplements the salary of the judges or solicitors-general of such court, the governing authority of such county shall be authorized, but not required, to supplement the

benefit being paid pursuant to this chapter to any retired state court judge of such court who is receiving benefits pursuant to this chapter or supplement the benefit being paid pursuant to this chapter to any beneficiary of any deceased state court judge. (Code 1981, § 47-23-106, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-107. Appointing beneficiary.

If there is no surviving spouse or survivor of a member covered by Code Section 47-23-105 or if a member not covered by such Code section dies before retirement, the amount of accumulated contributions made by such member, with regular interest on such amount, shall be paid to his or her named beneficiary, if any, or to the living person, if any, nominated by written designation of the member duly executed and filed with the board, otherwise to the member's estate. (Code 1981, § 47-23-107, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-108. Withdrawal of funds.

Except as otherwise expressly provided in this chapter, if a member ceases to be employed in a covered position, he or she may withdraw the total sum, with 6 percent interest, which he or she has paid into the fund. The member shall not be eligible at any time after such withdrawal to become a member of the fund, unless at a later date he or she becomes employed in a covered position, in which event he or she shall be reinstated into the fund as if he or she had never before been a member. Any such reinstated member shall have the privilege of reestablishing any prior creditable service, provided that the member repays into the retirement system an amount equal to the amount withdrawn, which shall be placed in the employee contribution accumulation fund, together with 6 percent interest from the date of withdrawal to the date of repayment, which interest shall be placed in the pension accumulation fund. The employee contributions paid by the employer as provided in subsection (c) of Code Section 47-23-80 shall be considered to be payments made by the member. (Code 1981, § 47-23-108, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2005, p. 535, § 39/HB 460.)

47-23-109. Cessation of retirement allowance for resuming state service.

(a) Except as provided in subsection (b) of this Code section, if any retired member who has not yet reached normal retirement age returns to the service of the state in any position, including, without limitation, service directly or indirectly as or for an independent contractor, except as a member of the General Assembly, his or her retirement allowance shall cease. Upon cessation of such service, the retired member, after proper notification to the board, shall receive the same retirement allowance which

he or she was receiving prior to returning to state service, calculated with any increases granted during the period of compensation.

(b) The retirement allowance of a retired member who has reached normal retirement age and who returns to the service of the state in any position, including, without limitation, service directly or indirectly as or for an independent contractor, other than as a member of the General Assembly shall not cease provided that such member performs no more than 1,040 hours of such service in any calendar year. (Code 1981, § 47-23-109, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 2009, p. 752, § 1/SB 98; Ga. L. 2009, p. 947, § 34/HB 202.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” at the end of subsection (b). The second 2009 amendment, effective May 11, 2009, in the first sentence of subsection (a), inserted “who has not yet reached normal retirement age” and inserted “, including, without limitation, service directly or indirectly as or for an independent contractor,”; and, in subsection (b), inserted “who has reached normal retirement age and”, inserted “, including, without limitation, service directly or indirectly as or for an independent contractor,” and deleted “; provided, however, that no such retired

member shall be eligible for employee health benefits other than those available to the member as a part of his or her retirement benefits or for any annual leave, any sick leave, or any other employee benefits available to a state employee in the classified service of the State Merit System of Personnel Administration” following “year” at the end. See the Code Commission notes regarding the effect of these amendments.

Code Commission notes. — The amendment of this Code section by Ga. L. 2009, p. 752, § 1, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 947, § 34. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

OPINIONS OF THE ATTORNEY GENERAL

Appointment of retired superior court judge as juvenile court judge. — Senior superior court judge, who is not being appointed in senior judge capacity pursuant to O.C.G.A. § 15-1-9.1, may be appointed to

serve as a part-time state-funded juvenile court judge and, so long as the hours worked annually do not exceed 1040 hours, there is no effect on the senior judge’s retirement. 2000 Op. Atty. Gen. No. U2000-9.

47-23-110. Service as a senior judge.

Any member retired under this chapter or vested for a benefit under this chapter may serve as a senior judge as provided for in Code Section 15-1-9.2 or Code Section 15-1-9.3 or as otherwise provided by legislation enacted after July 1, 1998, and compensation for such service shall not affect, enhance, diminish, or otherwise impair the payment or receipt of any retirement or pension benefits of such judge. (Code 1981, § 47-23-110, enacted by Ga. L. 1998, p. 513, § 1.)

ARTICLE 7

MISCELLANEOUS PROVISIONS

47-23-120. No abridgement of rights under predecessor retirement provisions.

This chapter shall not deny or abridge any right, benefit, option, credit, or election to which any person was entitled under a predecessor retirement system on June 30, 1998, and the board of trustees is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this chapter. All other persons who become members shall be subject to the provisions of this chapter. (Code 1981, § 47-23-120, enacted by Ga. L. 1998, p. 513, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Effect of transfer of membership. — Transfer of membership from the Superior Court Judges Retirement System to the Judicial Retirement System does not alter any right or entitlement which the person held

as a member of the former system except to the extent provision of the latter system have the effect of increasing benefit entitlement. 2000 Op. Atty. Gen. No. U2000-8.

47-23-121. Exemption from levy and sale, garnishment or attachment.

The return of contributions, any optional benefit, or any other right accrued or accruing to any person under this chapter and the moneys in the fund created by this chapter are exempt from levy and sale, garnishment, attachment, or any other process whatsoever and shall not be assignable, except as otherwise specifically provided in this chapter. (Code 1981, § 47-23-121, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-122. Falsification of records; correction of errors; participation in Employees' Retirement System or Superior Court Judges Retirement Fund.

(a) Any person who knowingly makes any false statements or falsifies or permits to be falsified any record or records of the retirement system in an attempt to defraud the retirement system as a result of such an act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$500.00, imprisonment not to exceed 12 months, or both.

(b) If any change or error in the records results in any member or beneficiary receiving from the fund more or less than he or she would have been entitled to receive had the records been correct, the board shall have the power to correct such error and to adjust the payments, as far as practicable, in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

(c) No member of this retirement system shall be eligible to make contributions to the Employees' Retirement System of Georgia or to the Superior Court Judges Retirement Fund of Georgia created by Chapter 8 of this title nor shall any such member be eligible for appointment as senior judge pursuant to Chapter 8 of this title. (Code 1981, § 47-23-122, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-123. Participation in Superior Court Judges Retirement Fund, District Attorneys Emeritus, and District Attorneys Retirement Fund.

No member of this retirement system shall be eligible to participate in the Superior Court Judges Retirement Fund of Georgia created by Chapter 8 of this title or the District Attorneys Emeritus and the District Attorneys Retirement Fund of Georgia created by Chapter 12 of this title. (Code 1981, § 47-23-123, enacted by Ga. L. 1998, p. 513, § 1.)

47-23-124. Legislative intent.

It is the intention of the General Assembly that except as is expressly provided in an Act approved April 2, 1998 (Ga. L. 1998, p. 513), creating this retirement system, the benefits and conditions precedent to receiving benefits as provided by this chapter shall apply to all covered positions equally, and no legislation shall be enacted modifying or repealing any provision of this chapter which would create a contrary result. (Code 1981, § 47-23-124, enacted by Ga. L. 1998, p. 513, § 1; Ga. L. 1999, p. 20, § 1; Ga. L. 2010, p. 1207, § 64/SB 436.)

The 2010 amendment, effective July 1, 2010, deleted a comma following "an Act" near the beginning.

Editor's notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: "The intent of this Act is to repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and the board of trustees of each public retirement system is authorized and directed to

provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act; provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010."

Ga. L. 2010, p. 1207, § 67, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision of Sections 62 through 64 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over this Act to the extent of the conflict."

CHAPTER 24

GEORGIA MILITARY PENSION FUND

Article 1		Sec.	
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47-24-24.	Accumulation account.		Retirement Requirements
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Membership			
47-24-40.	Eligibility.	47-24-100.	Eligibility; effective date and application.
Article 4		47-24-101.	Retirement allowance — Amount.
Employer Contributions		47-24-102.	Retirement allowance — Monthly payments; cease after death.
47-24-60.	Employer contributions toward	47-24-103.	Returning to service; recalculation of retirement allowance after cessation.
			Article 7
			Miscellaneous Provisions
		47-24-120.	Penalty for falsification of records.
		47-24-121.	Correction of errors.
		47-24-122.	Provisions are noncontractual.

Cross references. — State retired list of officers and enlisted persons and computation of time, § 38-2-9. Detail of officers from retired and reserve lists and National Guard to State Defense Force, § 38-2-52.

ARTICLE 1
GENERAL PROVISIONS

47-24-1. Definitions.

As used in this chapter, the term:

- (1) “Board” means the Board of Trustees of the Employees’ Retirement System of Georgia.

(2) "Creditable service" means prior service, membership service, and other service for which credit is allowed toward retirement under this chapter.

(3) "Date of establishment" means July 1, 2002.

(4) "Employer" means the State of Georgia.

(5) "Fund" means the Georgia Military Pension Fund.

(6) "Member" means any person included in the membership of the fund.

(7) "Membership service" means service as a member of the fund.

(8) "Prior service" means service rendered prior to July 1, 2002, as a member of the Georgia National Guard.

(9) "Retirement allowance" means monthly payments for life pursuant to Code Section 47-24-101. (Code 1981, § 47-24-1, enacted by Ga. L. 2002, p. 1153, § 1.)

ARTICLE 2

ADMINISTRATION AND MANAGEMENT

47-24-20. Creation; administration; power and privileges.

(a) A pension fund is created and placed under the administration of the Board of Trustees of the Employees' Retirement System of Georgia to provide retirement allowances and other benefits for members of the Georgia National Guard. The pension fund shall begin operation as of July 1, 2002.

(b) The fund shall have the power and privileges of a corporation and shall be known as the Georgia Military Pension Fund. By such name all of its business shall be transacted, all of its funds shall be invested, and all of its cash, securities, and other property shall be held. (Code 1981, § 47-24-20, enacted by Ga. L. 2002, p. 1153, § 1.)

47-24-21. Executive secretary.

There is created an office to be known as the executive secretary of the Georgia Military Pension Fund. The director of the Employees' Retirement System of Georgia shall serve as executive secretary of this fund. (Code 1981, § 47-24-21, enacted by Ga. L. 2002, p. 1153, § 1.)

47-24-22. Administration and operation of fund; actuarial and other services; technical adviser; actuarial investigation; rate of interest; rules and regulations; records; payment of employees and expenses.

(a) The general administration and responsibility for the proper operation of the fund and for putting this chapter into effect are vested in the board.

(b) The board shall engage such actuarial and other services as shall be required to transact the business of the fund.

(c) The board shall designate an actuary who shall be the technical adviser of the board on matters regarding the operation of the fund and shall perform such other duties as are required in connection therewith.

(d) At least once in each five-year period following the date of establishment, the actuary shall make an actuarial investigation into the mortality, service, and compensation experience of the members of the fund and shall make a valuation of the contingent assets and liabilities of the fund. The board, after taking into account the results of such investigation and valuation, shall adopt for the fund such mortality, service, and other tables as shall be deemed necessary.

(e) On the basis of regular interest and tables adopted by the board, the actuary shall make valuations of the contingent assets and liabilities of the fund at least once every three years.

(f) The board shall keep in convenient form such data as shall be necessary for the actuarial valuations of the contingent assets and liabilities of the fund and for checking the experience of the fund.

(g) The board shall determine, from time to time, the rate of regular interest for use in all calculations, with the rate of 4 percent per annum applicable unless changed by the board.

(h) Subject to the limitations of this chapter, the board shall, from time to time, establish rules and regulations for the administration of the fund and for the transaction of business.

(i) The board shall keep a record of all of its proceedings under this chapter, which record shall be open to the public.

(j) All persons employed by the board and the expenses of the board shall be paid from funds appropriated by the General Assembly. (Code 1981, § 47-24-22, enacted by Ga. L. 2002, p. 1153, § 1; Ga. L. 2003, p. 139, § 1.)

47-24-23. Trustees of funds; power to invest funds; conflicts of interest as to investments; custody of funds; vouchers.

(a) The board members shall be the trustees of the funds of the fund; may invest and reinvest such funds; and may hold, purchase, sell, assign,

transfer, and dispose of any of the securities and investments in which any of the moneys of the fund created under this chapter shall have been invested, as well as the proceeds of such investments and any moneys belonging to such fund, all in such manner as funds of the Employees' Retirement System of Georgia are invested and reinvested.

(b) Except as otherwise provided for in this chapter, no member or person employed by the board shall have a direct interest in the gains or profits of any investment made by the board. No member or employee of the board shall, directly or indirectly, for himself or herself or as an agent, in any manner use the funds of the fund except to make such current and necessary payments as are authorized by the board; nor shall any member or employee of the board become an endorser, surety, or in any manner an obligor for moneys loaned by or borrowed from the fund.

(c) The board shall be the custodian of the funds of the fund. All payments from such funds shall be made by the board only upon vouchers signed by two persons designated by the board. (Code 1981, § 47-24-23, enacted by Ga. L. 2002, p. 1153, § 1; Ga. L. 2003, p. 139, § 1.)

47-24-24. Accumulation account.

The accumulation account shall be the account in which all reserves for the payment of the part of all retirement allowances and other benefits payable from contributions made by the employer shall be held and from which all retirement allowances payable under the fund and the administrative expenses shall be paid. All interest and dividends earned on the funds of the fund shall be credited to the accumulation account. (Code 1981, § 47-24-24, enacted by Ga. L. 2002, p. 1153, § 1.)

ARTICLE 3

MEMBERSHIP

47-24-40. Eligibility.

All persons who are members of the Georgia National Guard on July 1, 2002, shall become members of the fund as of such date. All other persons shall become members of the fund on first becoming a member of the Georgia National Guard. (Code 1981, § 47-24-40, enacted by Ga. L. 2002, p. 1153, § 1.)

ARTICLE 4

EMPLOYER CONTRIBUTIONS

47-24-60. Employer contributions toward costs determined and approved by board; rules and regulations; contributions irrevocable.

The employer contributions toward the cost of the fund shall be as actuarially determined and approved by the board and, in making such determination, the adjutant general of the state shall supply the board with such information at such times and in such manner as the board shall specify by rules and regulations. The amounts determined as the employer contributions shall be certified to the Office of the State Treasurer at such times as the board shall specify by rules and regulations. It shall be the duty of the state treasurer to pay to the board, from funds appropriated or otherwise available to the fund, the amounts certified by the board. All employer contributions shall be irrevocable and may be used only for the exclusive benefit of members. (Code 1981, § 47-24-60, enacted by Ga. L. 2002, p. 1153, § 1; Ga. L. 2010, p. 863, §§ 2, 3/SB 296.)

The 2010 amendment, effective July 1, 2010, substituted “Office of the State Treasurer” for “Office of Treasury and Fiscal Services” in the second sentence and substi-

tuted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the third sentence.

ARTICLE 5

CREDITABLE SERVICE

47-24-80. Establishing creditable service.

The creditable service of a member shall include all established creditable prior service, service as a member of the Georgia National Guard since he or she became a member of the fund, and such other service as may be allowed as creditable service pursuant to this article. (Code 1981, § 47-24-80, enacted by Ga. L. 2002, p. 1153, § 1.)

47-24-81. Transfer of service credits.

In addition to the creditable service allowed pursuant to Code Section 47-24-80, any member shall receive creditable service for any past service as a member of the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Marine Corps, Air Force, Air Force Reserve, Air National Guard, or Coast Guard if such service meets the same requirement for creditable time served as set forth for nonregular service retirement under Chapter 67 of Title 10 of the United States Code. (Code 1981, § 47-24-81, enacted by Ga. L. 2002, p. 1153, § 1; Ga. L. 2003, p. 139, § 1.)

U.S. Code. — Retired pay for non-regular service, 10 U.S.C. § 1331.

47-24-82. Exceptions.

(a) Any provision of this article to the contrary notwithstanding, no service which is used to qualify a member for a retirement or pension benefit based on length of service, age, or physical disability from any of the regular components of the United States armed forces shall be used as creditable service under this pension fund.

(b) No provision in this chapter shall be construed as to affect or preclude any benefits to which a member may be entitled under any federal or private retirement or pension plan or any retirement or pension fund governed by this title. (Code 1981, § 47-24-82, enacted by Ga. L. 2002, p. 1153, § 1; Ga. L. 2003, p. 638, § 1.)

ARTICLE 6

RETIREMENT REQUIREMENTS

47-24-100. Eligibility; effective date and application.

(a) Upon the written application to the board, any member of the fund who:

- (1) Has attained the age of 60 years;
- (2) Has completed 20 or more years of creditable service, at least 15 of which were service as a member of the Georgia National Guard;
- (3) Served at least ten consecutive years as a member of the Georgia National Guard immediately before discharge; provided, however, for purposes of this paragraph, activation of a Georgia National Guard member into any of the regular components of the armed forces shall not constitute a break in service; and
- (4) Has received an honorable discharge from the Georgia National Guard

shall be retired by the board on a retirement allowance and shall thereupon become a beneficiary of the fund.

(b) The effective date of retirement shall be the first day of the month in which the application is received by the board, provided that no retirement application shall, in any case, be earlier than the first day of the month following the month of the applicant's discharge from the Georgia National Guard. Applications for retirement shall not be accepted more than 90 days in advance of the date of discharge. (Code 1981, § 47-24-100, enacted by Ga. L. 2002, p. 1153, § 1; Ga. L. 2003, p. 638, § 2; Ga. L. 2006, p. 1010, § 5/HB 1020.)

47-24-101. Retirement allowance — Amount.

Upon retirement under subsection (a) of Code Section 47-24-100, the retired member shall receive a monthly service retirement allowance of \$50.00 plus an additional \$5.00 per month for each year of creditable service over 20 years, up to a maximum monthly benefit of \$100.00. (Code 1981, § 47-24-101, enacted by Ga. L. 2002, p. 1153, § 1.)

47-24-102. Retirement allowance — Monthly payments; cease after death.

All retirement allowances shall be paid in monthly payments and shall cease in the month in which the death of the member occurs. (Code 1981, § 47-24-102, enacted by Ga. L. 2002, p. 1153, § 1.)

Code Commission notes. — Pursuant to § 1, was redesignated as Code Section 47-24-102. Code Section 28-9-5, in 2002, Code Section 47-24-102. 47-23-102 as enacted by Ga. L. 2002, p. 1153,

47-24-103. Returning to service; recalculation of retirement allowance after cessation.

If any retired member returns to the service of the Georgia National Guard, his or her retirement allowance shall cease. Upon cessation of such service, the retired member, after proper notification to the board, shall receive a retirement allowance calculated according to the number of years of creditable service the member has accumulated at the end of such return to service. (Code 1981, § 47-24-103, enacted by Ga. L. 2002, p. 1153, § 1.)

ARTICLE 7**MISCELLANEOUS PROVISIONS****47-24-120. Penalty for falsification of records.**

Any person who knowingly makes any false statements or falsifies or permits to be falsified any records of the fund in any attempt to defraud the fund, as a result of such an act, shall be guilty of a misdemeanor and, on conviction, shall be punished by a fine not to exceed \$500.00, imprisonment not to exceed 12 months, or both. (Code 1981, § 47-24-120, enacted by Ga. L. 2002, p. 1153, § 1.)

47-24-121. Correction of errors.

If any change or error in the records results in any member or beneficiary receiving from the fund more or less than he or she would have been entitled to receive had the records been correct, the board shall have the power to correct such error and to adjust the payments as far as practicable

in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (Code 1981, § 47-24-121, enacted by Ga. L. 2002, p. 1153, § 1.)

47-24-122. Provisions are noncontractual.

The benefits provided under this chapter shall not be a part of any contract and shall be subject to future legislation. (Code 1981, § 47-24-122, enacted by Ga. L. 2002, p. 1153, § 1.)

CHAPTER 25

MAGISTRATES RETIREMENT FUND

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ARTICLE 1

GENERAL PROVISIONS

47-25-1. Definitions.

As used in this chapter, the term:

- (1) “Average final monthly compensation” means the average monthly earnable compensation of any employee during his or her highest 24 months of creditable service.
- (2) “Board” means the Board of Commissioners of the Magistrates Retirement Fund of Georgia.
- (3) “Full-time chief magistrate” means a chief magistrate who regularly exercises the powers of a magistrate as set forth in Code Section 15-10-2 at least 40 hours per workweek.
- (4) “Fund” means the Magistrates Retirement Fund of Georgia.

(5) "Member" means a member of the Magistrates Retirement Fund of Georgia.

(6) "Secretary-treasurer" means the secretary-treasurer of the Board of Commissioners of the Magistrates Retirement Fund of Georgia. (Code 1981, § 47-25-1, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

ARTICLE 2

ADMINISTRATION AND MANAGEMENT

47-25-20. Board of Commissioners created; members; term of office.

(a) There is created the Board of Commissioners of the Magistrates Retirement Fund of Georgia. The board shall consist of seven members as follows:

- (1) The Governor or the Governor's designee;
- (2) An appointee of the Governor who is not the Attorney General; and
- (3) Five full-time chief magistrates who are members of the fund.

(b) The members of the board provided for by paragraph (3) of subsection (a) of this Code section shall be appointed by the Governor. The first such members shall be appointed by the Governor to take office on July 1, 2006, for initial terms as follows: one such member shall be appointed for one year; two such members shall be appointed for terms of two years; and two such members shall be appointed for terms of three years. Thereafter, the Governor shall appoint successors upon the expiration of the respective terms of office for terms of three years. All such members shall serve until their successors are appointed and qualified. Such members shall be eligible for reappointment to successive terms of office as members of the board.

(c) The board shall elect a chairperson from among its own membership to serve for a term as established by rules of the board. Four members of the board shall constitute a quorum for the transaction of business. All members of the board shall serve without compensation but may be reimbursed for travel and other expenses incurred by them in carrying out their duties as members of the board.

(d) In the event of a vacancy in the membership of the board, the remaining members of the board shall appoint a full-time chief magistrate who is a member of the fund to fill such vacancy for the unexpired term.

(e) The Council of Magistrate Court Judges shall be authorized to submit the names of nominees for each position on the board appointed by the Governor pursuant to this Code section. The Governor may consider

such nominees in making such appointments, but it is specifically provided that all such appointments shall be at the sole discretion of the Governor, and the Governor shall not be required to make any appointments from nominees made by the Council of Magistrate Court Judges. (Code 1981, § 47-25-20, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-21. Secretary-treasurer.

(a)(1) There is created the office of secretary-treasurer of the board. The secretary-treasurer shall be elected and appointed by the board and shall serve at the pleasure of the board. His or her compensation and duties may be fixed by the board. In addition to such salary, the secretary-treasurer shall receive credit for a sum of \$1,250.00 per year as dues in the retirement system.

(2) The board or the secretary-treasurer with the approval of the board may employ additional personnel to assist the board or secretary-treasurer in carrying out duties provided in this chapter. The compensation and duties of any such personnel shall be fixed by the board.

(b) The secretary-treasurer shall be paid retirement benefits upon retiring as secretary-treasurer as provided in Article 5 of this chapter for a full-time chief magistrate retiring with the highest benefit allowed by such article and shall be entitled to any retirement option allowed by such article.

(c) The board shall have authority to require the secretary-treasurer to give a good and sufficient surety bond in an amount to be determined by the board. The bond shall be payable to the board and shall be conditioned upon the proper and faithful performance of the duties of the secretary-treasurer. The secretary-treasurer shall be required to make quarterly reports to the board, which reports shall show all receipts and disbursements in such form and in such manner as the board may require. He or she shall likewise be required quarterly to make a full account of all moneys or property coming into his or her hands on behalf of the board at any time. (Code 1981, § 47-25-21, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-22. Powers and duties.

(a) The board is granted the following powers and duties:

(1) To provide for the collection of all moneys provided in this chapter;

(2) To pay the administrative expenses of the board;

(3) To hear and decide all applications for retirement benefits under this chapter;

(4) To make payment of all retirement benefits that may be determined to be due under the terms of this chapter;

(5) To make all necessary rules and regulations, not inconsistent with the laws of the state, for its government and for the government of the employees of the board;

(6) To determine and fix rules of eligibility of persons to receive retirement benefits;

(7) To make refunds and repayments to persons who may be entitled to receive them; and

(8) To keep all records of its meetings.

(b) The board shall also have all powers necessary for the purpose of administering this chapter.

(c)(1) Subject to the terms and limitations of this subsection, the board is authorized to adopt from time to time a method or methods of providing for increases in the maximum monthly retirement benefit payable under Article 5 of this chapter for persons theretofore or thereafter retiring under this chapter. Such method shall be based upon:

(A) The recommendation of the actuary of the board;

(B) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(C) Such other factors as the board deems relevant.

Any such increase may be uniform or may vary in accordance with the time of retirement, length of service, age, nature of the retirement, or such other factors as the board shall determine. No benefit increase shall be awarded under this paragraph greater than 1.5 percent in any six-month period.

(2) No member shall receive a benefit increase under paragraph (1) of this subsection in any year in which he or she realizes a benefit increase by operation of Code Section 47-25-81. (Code 1981, § 47-25-22, enacted by Ga. L. 2006, p. 246, § 1/SB 244; Ga. L. 2007, p. 62, § 1/SB 104.)

47-25-23. Control of funds; investments.

(a) The board shall have control of all funds provided for in this chapter and all funds shall be received and disbursed from a special account to the credit of the board. The expenses of administering this fund and the benefits provided for in this chapter shall be paid from such funds. The board shall have authority to expend the funds in accordance with this chapter.

(b) The board shall have full power to invest and reinvest such funds, subject to all the terms, conditions, limitations, and restrictions imposed by Article 7 of Chapter 20 of this title, the “Public Retirement Systems Investment Authority Law.” Subject to such terms, conditions, limitations, and restrictions, the board shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds are invested, including the proceeds of any investments and any money belonging to the fund.

(c) The board is authorized to employ agents, including, but not limited to, banks or trust departments thereof, and to contract with such agents for their services as investment advisers and counselors, making recommendations for investments and making investments if the board so authorizes. (Code 1981, § 47-25-23, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-24. Gifts, grants, and bequests.

The board may take, by gift, grant, or bequest, any money, real or personal property, or any other thing of value and may hold or invest it for the use and purposes of the fund in accordance with this chapter. (Code 1981, § 47-25-24, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-25. Permanent records.

The board shall keep permanent records of all persons who qualify to participate in the benefits of this chapter, an accurate record of all payments and disbursements, and a detailed record of all the acts and doings of the board. (Code 1981, § 47-25-25, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-26. Annual audit of board activity.

The state auditor is authorized and directed to make an annual audit of the acts and doings of the board and to make a complete report of the same to the General Assembly in such detail as he or she may see fit. The state auditor shall also have the right to audit the affairs of the board and any of its employees at any time that he or she may see fit or at any time that he or she may be requested to do so by the board or by the Governor. (Code 1981, § 47-25-26, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

ARTICLE 3

MEMBERSHIP

47-25-40. Qualifications.

Before any person shall be eligible to participate in the fund, he or she must be serving as a duly qualified and commissioned full-time chief

magistrate of a county of the State of Georgia or as the secretary-treasurer. Any qualified person who desires to participate in the fund shall make application to the board for membership in the fund on a form to be furnished by the board for that purpose, giving such information, together with verification and proof thereof, as may be required by the board. Such application shall be made not later than July 1, 2007, or within six months after becoming eligible for membership, whichever is later. (Code 1981, § 47-25-40, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-41. Member dues.

Each member shall pay into the fund as dues the sum of \$105.00 per month. Each month's dues shall be paid not later than the tenth day of that month. (Code 1981, § 47-25-41, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

ARTICLE 4

FEES

47-25-60. Collection of fees; accurate records.

(a) In addition to all other legal costs, the sum of \$3.00 shall be charged and collected in each civil matter or proceeding filed in the magistrate courts.

(b) The clerks of the magistrate courts shall collect the fees provided for in subsection (a) of this Code section and the fees so collected shall be remitted to the board on a quarterly basis or at such time as the board may provide. It shall be the duty of the clerks to keep accurate records of the amounts due the board under this Code section and such records may be audited by the board at any time. The sums remitted to the board under this Code section shall be used for the purposes provided in this chapter. (Code 1981, § 47-25-60, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

ARTICLE 5

BENEFITS

47-25-80. Requirements for receiving benefits.

In order for a member to be eligible to receive retirement benefits under this chapter, he or she must have:

- (1) Served as a regularly qualified and commissioned full-time chief magistrate or as the secretary-treasurer for at least eight years;
- (2) Fully complied with this chapter;

(3) Terminated his or her official capacity as a full-time chief magistrate or as the secretary-treasurer;

(4) Attained the age of 60 years;

(5) Filed with the board his or her application for such retirement, on a form to be furnished by the board, within a period of 90 days, or as soon thereafter as possible, after reaching the age of 60 years or after termination of his or her official capacity as a full-time chief magistrate or as the secretary-treasurer, whichever may occur last in point of time; and

(6) Had his or her application for retirement approved by the board. (Code 1981, § 47-25-80, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-81. Amount of benefit.

Any member who is approved for retirement benefits as provided in Code Section 47-25-80 shall be paid a monthly sum equal to 4 percent of his or her average final monthly compensation for each year served by the member up to, but not exceeding, a total of 20 years; provided, however, that the final annual compensation used for calculating a benefit under this Code section shall not exceed \$33,772.20; provided, further, that the board of commissioners is authorized to adopt from time to time a method or methods of providing for increases in the maximum final monthly compensation used for calculating a benefit as provided in this Code section. Such method or methods shall be based upon:

(1) The recommendation of the actuary of the board of commissioners;

(2) The maintenance of the actuarial soundness of the fund in accordance with the standards provided in Code Section 47-20-10 or such higher standards as may be adopted by the board; and

(3) Such other factors as the board deems relevant; provided, however, that any such increase shall be uniform and shall apply equally to all members of this retirement system.

No time for which dues have not been paid in accordance with Code Section 47-25-41 shall be considered in determining the number of years of service. (Code 1981, § 47-25-81, enacted by Ga. L. 2006, p. 246, § 1/SB 244; Ga. L. 2010, p. 1207, § 66/SB 436.)

The 2010 amendment, effective July 1, 2010, substituted “board of commissioners” for “board of trustees” in the first sentence of the introductory paragraph and at the end of paragraph (1).

Editor’s notes. — Ga. L. 2010, p. 1207, § 1, not codified by the General Assembly, provides that: “The intent of this Act is to

repeal obsolete and inoperative provisions and to make certain stylistic corrections in Title 47 of the Official Code of Georgia Annotated. Nothing in this Act shall deny, abridge, increase, renew, revive, or on any way affect any right, benefit, option, credit, or election to which any person was entitled pursuant to such title on June 30, 2010, and

the board of trustees of each public retirement system is authorized and directed to provide by regulation for the continuation of any such right, benefit, option, credit, or election not otherwise covered in this Act;

provided, however, that any such right, benefit, option, credit, or election shall be subject to the statutory provisions in effect on June 30, 2010.”

47-25-82. Benefits for surviving spouse.

(a) As used in this Code section, the term “surviving spouse” means the person who was married to a member on the date of the member’s death.

(b) Upon the death of any member who is then receiving retirement benefits and upon the surviving spouse of such member attaining 60 years of age, said spouse shall be paid spouse’s benefits which shall be equal to 50 percent of the retirement benefits then being paid to such member. Such benefits shall be paid for the remainder of the life of such surviving spouse.

(c) Upon the death of any member prior to retirement, the surviving spouse of such member may elect:

(1) To withdraw the dues paid into the retirement fund by the deceased member plus interest at the rate specified by law, in which case the spouse shall be deemed to have waived any right to any benefits; or

(2) To leave such dues in the retirement fund and to receive spouse’s benefits which shall be payable beginning:

(A) On the date of the member’s death, if such member is 60 years of age or older; or

(B) On the date on which the surviving spouse of the deceased member reaches 60 years of age,

whichever event occurs last, and which shall be equal to 50 percent of the retirement benefits which the deceased member was drawing at the time of death or, in the case of a member who dies prior to his or her sixtieth birthday, which such deceased member would have been entitled to receive upon reaching 60 years of age had he or she lived and ceased service as a full-time chief magistrate or the secretary-treasurer on the date of his or her death.

(d) A member who is unmarried at the time of such election may designate a survivor at the time of making such election. If a member is married at the time of such election, the member may elect a designated survivor other than his or her spouse under this subsection only with the written agreement of the spouse. In any event, the designated survivor shall be a person with whom the member has a familial relationship through blood, marriage, or adoption. The designated survivor designated pursuant to this subsection shall be entitled to a survivor’s benefit which is the actuarial equivalent to a surviving spouse’s benefit as provided in subsection

(b) of this Code section. (Code 1981, § 47-25-82, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-83. Refund of dues.

(a) Any member, after ceasing to serve as a full-time chief magistrate or as the secretary-treasurer and after waiving any right to retirement benefits in writing on a form to be provided by the board, may apply for and be refunded all dues paid, together with 5 percent simple interest per annum from the end of the calendar year in which paid to the end of the calendar year next preceding the application for the refund.

(b) Although retirement pay shall be based on Code Section 47-25-81 and nothing in this Code section shall be construed to alter same, at the effective date of retirement, simple interest at a rate of 5 percent per annum shall be computed on all dues paid from the end of the calendar year in which paid to the end of the calendar year immediately preceding the date of retirement and shall be added to the total dues paid. After all retirement benefits coming due under Code Section 47-25-81 have been paid and if the total thereof shall not be equal to or exceed the above total of dues and interest, then the balance of such principal and interest shall be paid to the estate of the deceased member.

(c) Upon application by the estate of any member who dies prior to retirement and who does not have a surviving spouse who is eligible for benefits under Code Section 47-25-82, all dues paid by such deceased member, together with 5 percent simple interest per annum from the end of the calendar year in which paid to the end of the calendar year next preceding the application for the refund, shall be paid to the estate of the deceased member.

(d) No dues may be refunded except in strict compliance with this Code section. (Code 1981, § 47-25-83, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-84. Total and permanent disability.

Notwithstanding any other provisions of this chapter to the contrary, a member may retire after completing four years of creditable service if he or she becomes totally and permanently disabled after commencing service as a full-time chief magistrate or as the secretary-treasurer. Any such member shall be entitled to receive retirement benefits in the amount that he or she would receive if his or her retirement were effective at the time he or she became disabled. All questions relating to the degree and nature of the total and permanent disability suffered by the member shall be determined by the board. (Code 1981, § 47-25-84, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-85. Members not prevented from belonging to another retirement system.

Nothing contained in this chapter shall be construed so as to prevent any person who is a member of the fund from belonging to any other retirement, annuity, or benefit system. (Code 1981, § 47-25-85, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-86. Suspension of benefits if retired member becomes employed as full-time or part-time magistrate.

(a) If a retired member becomes employed as a full-time or part-time magistrate or chief magistrate, his or her retirement benefits shall be suspended during the period of time he or she holds such position, and upon cessation of such service, his or her prior retirement allowance shall be resumed.

(b) If a retired member becomes employed as a full-time chief magistrate, he or she may elect again to become a contributing member of the retirement system and be governed by the retirement provisions of this chapter. (Code 1981, § 47-25-86, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

ARTICLE 6

MISCELLANEOUS PROVISIONS

47-25-100. Insufficient funds from which to pay benefits.

If the board determines that the funds derived from the sources provided for in this chapter are not actuarially sufficient at any time to enable the board to pay in full each person determined to be entitled to the benefits provided for, plus all contingent and other liabilities, then a prorated percentage of such payments shall be made to each person entitled thereto until the funds shall be replenished actuarially sufficient to enable the board to resume such payments in accordance with the terms of this chapter. In no event shall the board or any member thereof be liable to any person for any deficiency in payments made under this Code section. (Code 1981, § 47-25-100, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

47-25-101. Exemption of funds from attachment, garnishment, or judgment; assignability.

None of the funds provided for in this chapter shall be subject to attachment, garnishment, or judgment rendered against the person entitled to receive the same. Such funds shall not be assignable. (Code 1981, § 47-25-101, enacted by Ga. L. 2006, p. 246, § 1/SB 244.)

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